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**CONTAINS CONFIDENTIAL PORTIONS**

# **Transcript of Micheal Paul Donovan, Corporate Designee**

**Date:** March 3, 2020

**Case:** RLI Insurance Company -v- Nexus Services, Inc.

**Planet Depos**

**Phone:** 888.433.3767

**Email::** [transcripts@planetdepos.com](mailto:transcripts@planetdepos.com)

**[www.planetdepos.com](http://www.planetdepos.com)**

Transcript of Micheal Paul Donovan, Corporate Designee

1 (1 to 4)

Conducted on March 3, 2020

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF VIRGINIA  
3 Harrisonburg Division  
4 -----x  
5 RLI INSURANCE COMPANY, :  
6 Plaintiff, :  
7 v. : Case No.:  
8 NEXUS SERVICES, INC., et al.,: 5:18-cv-00066-MFU  
9 Defendants.:  
10 -----x  
11  
12 Video deposition of NEXUS SERVICES, INC.  
13 By and through its Corporate Designee  
14 MICHEAL PAUL DONOVAN,  
15 CONTAINS CONFIDENTIAL PORTIONS  
16 McLean, Virginia  
17 Tuesday, March 3, 2020  
18 11:29 a.m.  
19  
20 Job No.: 290403  
21 Pages: 1 - 446  
22 Reported by: Judith E. Bellinger, RPR, CRR

1 A P P E A R A N C E S  
2 ON BEHALF OF THE PLAINTIFF:  
3 VIVIAN KATSANTONIS, ESQUIRE  
4 CHRISTOPHER HARRIS, ESQUIRE  
5 WATT, TIEDER, HOFFAR & FITZGERALD, LLP  
6 1765 Greensboro Station Place  
7 Suite 1000  
8 McLean, VA 22102  
9 703.749.1000  
10  
11 ON BEHALF OF THE DEFENDANTS:  
12 MARY DONNE PETERS, ESQUIRE (Telephonic)  
13 GORBY PETERS & ASSOCIATES, LLC  
14 1175 Peachtree Street  
15 Suite 1000  
16 Atlanta, GA 30361  
17 404.239.1150  
18  
19  
20  
21  
22

2  
1 Video deposition of MICHEAL PAUL DONOVAN held  
2 at the offices of:  
3  
4  
5 WATT, TIEDER, HOFFAR & FITZGERALD, LLP  
6 1765 Greensboro Station Place  
7 Suite 1000  
8 McLean, VA 22102  
9 703.749.1000  
10  
11  
12  
13 Pursuant to notice, before Judith E.  
14 Bellinger, Registered Professional Reporter,  
15 Certified Realtime Reporter, and Notary Public in  
16 and for the Commonwealth of Virginia.

2 A P P E A R A N C E S C O N T I N U E D  
3 CHRIS K. KOWALCZUK, ESQUIRE  
4 ATTORNEY AT LAW  
5 P.O. Box 11971  
6 Roanoke, VA 24022  
7 540.345.0101  
8  
9 JOHN M. SHOREMAN, ESQUIRE  
10 MCFADDEN & SHOREMAN  
11 1050 Connecticut Avenue, NW  
12 Suite 1000  
13 Washington, D.C. 20036  
14 202.772.3188  
15  
16 ALSO PRESENT:  
17 Jeremy Dineen, Videographer  
18 Mario Williams  
19 Spencer Chaszar  
20  
21  
22

## Transcript of Micheal Paul Donovan, Corporate Designee

2 (5 to 8)

Conducted on March 3, 2020

C O N T E N T S		5	E X H I B I T S C O N T I N U E D		7
2 EXAMINATION OF DONOVAN	PAGE		2		
3 By Ms. Katsantonis	11		3 Exhibit 12 Nexus Services Inc. Profit and Loss	286	
4 By Mr. Shoreman	431		4 January - December 2017		
5 By Ms. Katsantonis	433		5 Exhibit 13 Nexus Services Inc. (Old) Profit	294	
6 E X H I B I T S			6 and Loss January - December 2019,		
7 (Attached to the transcript)			7 Bates No. Eckert_Nexus_027807		
8			8 Exhibit 14 Nexus Services Inc. (Old) Profit	297	
9 Donovan Deposition Exhibits:	PAGE		9 and Loss January - December 2018,		
10 Exhibit 1 Notice of 30(B)(6) Deposition of	11		10 Bates No. Eckert_Nexus_027806		
11 Nexus Services, Inc.			11 Exhibit 15 Email chain. Top email from Chris	315	
12 Exhibit 2 Summary of Nexus' Contempt by	67		12 Harris to Stefanie Castalano dated		
13 Delayed Payments of Past Due Invoices			13 March 3, 2020		
14 Exhibit 3 Summary of Nexus' Contempt by	85		14 Exhibit 16 Email chain. Top email from Ira	322	
15 Failure to Pay Past Due Invoices			15 Sussman to Juliana Gutierrez dated 28		
16 Exhibit 4 Summary of Monthly RLI Bond Demands	88		16 Mar 2018		
17 & Nexus Responses			17 Exhibit 17 Letter dated March 3, 2017, to	339	
18 Exhibit 5 Email chain. Top email from Laura	131		18 Micheal Donovan from Ira Sussman		
19 Piispanen to eschneider@nexushelps.com			19 Exhibit 18 Email from Ira Sussman to	341	
20 dated 10 May 2016, Bates Nos.			20 mdonovan@nexushelps.com dated		
21 RLY_00000001 -0002			21 3/6/2017, Bates No. NEXUS0222756		
22			22		
E X H I B I T S C O N T I N U E D		6	E X H I B I T S C O N T I N U E D		8
3 Exhibit 6 Email chain. Top email from Laura	138		3 Exhibit 19 Letter dated March 13, 2017, to	343	
4 Piispanen to Bonnie Heitman dated June			4 Micheal Donovan from Ira Sussman		
5 23, 2016, Bates Nos. RLI_000018727 -			5 Exhibit 20 Email from Mike Donovan to Ira	348	
6 8739			6 Sussman, and others, dated 3/15/2017,		
7 Exhibit 7 Email from Laura Piispanen to	156		7 Bates Nos. NEXUS0221609 - 1646		
8 bigmarcobonds@gmail.com, and others,			8 Exhibit 21 Email chain. Top email from Dave	372	
9 dated January 21, 2020			9 Sandoz to Mike Donovan dated		
10 Exhibit 8 Email from Laura Piispanen to	158		10 11/9/2016, Bates No. NEXUS0236333		
11 bigmarcobonds@gmail.com, and others,			11 Exhibit 22 Email chain. Top email from Mike	401	
12 dated November 13, 2019			12 Donovan to Dave Sandoz dated		
13 Exhibit 9 Email from Barb Roberts to	163		13 3/22/2018, Bates Nos. NEXUS0253294 -		
14 bigmarcobonds@gmail.com dated April 2,			14 3300		
15 2018			15 Exhibit 23 Letter dated June 1, 2017, to Mary	414	
16 Exhibit 10 Email chain. Top email from Laura	216		16 Donne Peters from Vivian Katsantonis		
17 Piispanen to			17 Exhibit 24 Letter dated March 19, 2018, to	425	
18 eschneider@nexushelps.com, and others,			18 Mary Donne Peters from Vivian		
19 dated 19 Sep 2016, Bates Nos.			19 Katsantonis		
20 RLI_000000080 - 0084			20 Exhibit 25 Email from Mary Donne Peters to	427	
21 Exhibit 11 Exhibit 6	256		21 Vivian Katsantonis dated March 28,		
22			22 2018		

Transcript of Micheal Paul Donovan, Corporate Designee

3 (9 to 12)

Conducted on March 3, 2020

9

1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: Here begins  
3 Disc No. 1 in the 30(b)(6) deposition of Nexus  
4 Services, Inc., Libre by Nexus, Inc. and Homes by  
5 Nexus, Inc. by corporate designee Michael Donovan  
6 in the matter of RLI Insurance Company v. Nexus  
7 Services, Inc., et al., in the United States  
8 District Court for the Western District of  
9 Virginia, Harrisonburg Division, Case  
10 No. 518-CC-00066MFU.

11 Today's date is March 3rd, 2020, the  
12 time on the video monitor is 11:29.

13 The videographer today is Jeremy Dineen  
14 representing Planet Depos. This video deposition  
15 is taking place at 1765 Greensboro Station Place  
16 in McLean, Virginia. Would counsel please voice  
17 identify themselves and state whom they represent.

18 MS. KATSANTONIS: Vivian Katsantonis on  
19 behalf of the Plaintiff RLI Insurance Company.

20 MR. HARRIS: Christopher Harris, also  
21 on behalf of the Plaintiff.

22 MR. SHOREMAN: John Shoreman on behalf

10 of Defendants Nexus Services, Libre by Nexus, and  
1 of Defendants Nexus Services, Libre by Nexus, and  
2 Homes by Nexus.

3 MR. WILLIAMS: Mario Williams on behalf  
4 of the Defendant.

5 MR. KOWALCZUK: Chris Kowalczuk on  
6 behalf of the Defendants and present with me is a  
7 college intern, Spencer Chaszar.

8 MS. KATSANTONIS: On the phone we have  
9 Mary Donne for the Defendants.

10 MS. DONNE-PETERS: Mary Donne-Peters on  
11 behalf of the Defendants.

12 THE VIDEOGRAPHER: The court reporter  
13 today is Judy Bellinger representing Planet Depos.  
14 Would the reporter please swear in the witness.  
15 Whereupon,

16 MICHEAL PAUL DONOVAN,  
17 being first duly sworn or affirmed to testify to  
18 the truth, the whole truth, and nothing but the  
19 truth, was examined and testified as follows:

20

21

22

11

1 DIRECT EXAMINATION BY COUNSEL FOR THE PLAINTIFF

2 BY MS. KATSANTONIS:

3 Q All right. Good morning, Mr. Donovan.

4 A Good morning, Ms. Katsantonis. How are  
5 you?

6 Q Good, thank you.

7 We're here this morning for the  
8 30(b)(6) deposition of Nexus Services, Inc., Libre  
9 by Nexus, and Homes by Nexus.

10 A Yes, and I get to be the deponent. How  
11 exciting.

12 Q All right. So I'm going to just hand  
13 you and we're going to mark this as Exhibit 1.

14 (Donovan Exhibit 1 marked for  
15 identification and attached to the transcript.)

16 MR. SHOREMAN: Thank you.

17 MS. KATSANTONIS: Sure.

18 MR. SHOREMAN: Just throw it at me,  
19 that's fine.

20 Q I've marked as Exhibit 1 the 30(b)(6)  
21 notice. This is the one for Nexus Services.

22 A Uh-huh.

12

1 Q And are you familiar with this  
2 document? Have you reviewed it?

3 A I have reviewed it.

4 Q Okay. And there are 25 categories  
5 listed as topics to be discussed during the  
6 30(b)(6) deposition. Are you familiar with those  
7 topics?

8 A I am.

9 Q And are you the corporate  
10 representative that is providing testimony on  
11 behalf of Nexus Services, Inc., Libre by Nexus and  
12 Homes by Nexus pursuant to the 30(b)(6) deposition  
13 notices?

14 A I am.

15 Q Okay. And did you bring documents with  
16 you today to assist in your testimony?

17 A I did in fact.

18 Q Okay. And those documents have not yet  
19 been actually given to counsel for RLI, but we'll  
20 proceed and then you can show me the documents  
21 you're relying on as we proceed?

22 A Sure, and my intention is to leave them

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Transcript of Micheal Paul Donovan, Corporate Designee

4 (13 to 16)

Conducted on March 3, 2020

13

15

1 with you by the way, so I intend to make a  
2 production of everything I brought.

3 Q Okay.

4 MR. SHOREMAN: Let me just state for  
5 the record, some of the documents that he just  
6 referred to have already been produced.

7 A That's correct.

8 Q Sure. Generally. Can you just  
9 generally describe the types of documents you've  
10 brought with you?

11 A Sure. I have the P&L and property list  
12 for Homes by Nexus, which covers the properties to  
13 kind of go in order. I have prior P&Ls for the  
14 different periods that the categories request  
15 information on. I have general ledger  
16 information, I have a disk with that information  
17 that I'll provide as well.

18 I have a KPI for Libre by Nexus. I  
19 have the global client list to show the total  
20 amount of indemnification that Nexus has been  
21 responsible for in the life of its program. I  
22 have the total invoices paid and the total global

1 fail rate. I have the fail rate for RLI, reviewed  
2 those and reviewed several other documents related  
3 to the balance sheets as well.

4 Q Okay. Great.

5 A It was a lot to remember.

6 Q I can appreciate that fact. Thank you.  
7 So in looking at the 30(b)(6) notice.

8 A Yes, ma'am.

9 Q And some of the topics I know there's  
10 going to be a little bit of overlap. But let's  
11 talk about, first, the program.

12 A Okay.

13 Q And let's start off just getting some  
14 sort of historical data information regarding  
15 Nexus' program.

16 So you said you brought data with you  
17 as to how many program participants Nexus has had.  
18 Is that through the entire life of the program?

19 A Through the entire life of the program.

20 Q And so what dates would that cover?

21 A That would cover from January of 2014  
22 to present.

1 Q And what is the number of program  
2 participants?

3 A So the number of program  
4 participants -- would you give me just a second,  
5 I'm so sorry.

6 Q No, no, no. Just as a clarification.

7 When we use the word "program participants," let's  
8 make sure we're talking about are these all  
9 immigrants who Nexus has facilitated an  
10 immigration bond for their release from custody?

11 A That's correct. The program  
12 participant would specifically be an immigration  
13 bond securitized client. They're people in  
14 Capsule, of course, that you might see that are  
15 dealing with other issues but you're not going to  
16 find any of those people. This definition is just  
17 for the immigration bond securitization. And it's  
18 roughly about 24,000 people. The total is 23,000  
19 and some change and I've got that on this document  
20 that I'm going to give to you. I'm going to  
21 produce it electronically because it's thousands  
22 of pages.

14

16

1 Q Okay. All right. So you said that the  
2 total number of program participants or immigrants  
3 for whom you've requested a bond for is?

4 A About 24,000. I can give you the exact  
5 number, but, Vivian, you're never going to believe  
6 this, the last page of this is missing so I need  
7 to pull up the electronic copy which I can at a  
8 break and give you the total number. I thought I  
9 was doing so well, too.

10 Q About 24,000?

11 A Correct.

12 Q And how many outstanding program  
13 participants exist today whom Nexus has requested  
14 a bond for?

15 A So Nexus doesn't, we don't track the --  
16 we don't track when the client is exonerated as  
17 sort of coming off the program, when a client's  
18 bond is canceled because we're often still  
19 providing services to the client. So the number  
20 of active clients, meaning active that they  
21 haven't had their bonds canceled just isn't  
22 something that we track. I'm happy to compile it,

Transcript of Micheal Paul Donovan, Corporate Designee

5 (17 to 20)

Conducted on March 3, 2020

17

19

1 but it isn't something that we track as a matter  
2 of our record keeping.

3 Q Okay. So you don't -- so as you sit  
4 here today, you don't know how many active clients  
5 or program participants exist who Nexus' requested  
6 a bond for?

7 A Correct.

8 Q Okay. So what information do you  
9 have -- or what did you collect? How many bond --  
10 participants have -- so you don't know how many  
11 have been canceled; is that right?

12 A That's correct. And the idea, and I  
13 think there's some confusion, there's no benefit  
14 in calculating a fail rate by understanding how  
15 many bonds have been canceled because bonds can be  
16 canceled over the life of the bond and as we know,  
17 a claim is when a bond is breached and there's  
18 no -- you can't appeal it, it's done. That's when  
19 a claim is made in favor of the government, right?

20 Q That's Nexus' definition. I just want  
21 to understand what your definition is.

22 A Yes, and the CFR.

1 bond, right?

2 A I mean until there's a claim against  
3 the bond you don't have to pay the bond, period,  
4 right, so...

5 Q Just stick with my question. When a  
6 bond is canceled, when an I391 form is issued, the  
7 surety is no longer responsible for paying that  
8 bond and, therefore, doesn't have any more  
9 outstanding exposure on the bond; isn't that  
10 correct?

11 A No, I don't think the surety has a  
12 responsibility to pay a bond just because it's  
13 outstanding, so I disagree.

14 Q Wait, I don't understand.

15 MR. SHOREMAN: No, no, please don't  
16 interrupt him.

17 A What I would say is that there would be  
18 no further -- there would be no future chance of  
19 any liability, but the idea that an open bond is a  
20 liability is wrong. I mean, just because you have  
21 an open bond there's no claim against that bond.  
22 That person hasn't failed. So it's not as if the

18

20

1 Q Well, again --

2 MR. SHOREMAN: Objection. He's  
3 testifying on behalf of the corporation.

4 MS. KATSANTONIS: Right. What Nexus'  
5 definition is because it's certainly a legal  
6 conclusion.

7 But you're saying that a --

8 A I'm saying that the number of  
9 cancellations has nothing to do with our success  
10 or fail rate.

11 Q Okay. Don't you believe that the  
12 cancellation is an important figure for sureties?

13 A I think the cancellation was an  
14 important figure of sureties before the election  
15 of Donald John Trump as president but  
16 unfortunately the current administration has  
17 exacerbated the immigration court process. These  
18 things take much longer now and there's no way to  
19 forecast some of those realities.

20 Q I'm not asking for forecasting, I'm  
21 just saying when a bond is canceled, the surety is  
22 no longer -- has exposure for payment of that

1 surety owes that money. It's not as if RLI --

2 Q You understand what exposure is, right?  
3 Exposure is a potential. Potential liability,  
4 right?

5 A No, I do. I do absolutely understand  
6 what exposure is.

7 Q Okay?

8 A But I want to make sure we're clear  
9 between this idea that there might be something  
10 due one day and what we are talking about which is  
11 when things come due because when things comes due  
12 Nexus stands in front of RLI and pays them every  
13 single time.

14 Q Let me -- I hear -- I get where  
15 you're -- you know, you're asserting Nexus'  
16 position and that's fine. But let me just take it  
17 in smaller bits, okay?

18 When a surety receives an I391 form  
19 cancellation, okay, the surety, isn't it true,  
20 that the surety has no liability -- no further  
21 liability on the bond?

22 MR. SHOREMAN: Objection. This witness

Transcript of Micheal Paul Donovan, Corporate Designee

6 (21 to 24)

Conducted on March 3, 2020

21

23

1 is here to testify on behalf of Nexus.

2 Q That's what I mean.

3 MR. SHOREMAN: Not the surety. You're  
4 asking him about a surety.

5 MS. KATSANTONIS: I'm asking him about  
6 Nexus' understanding of a cancellation.

7 MR. SHOREMAN: That's a different  
8 question.

9 MS. KATSANTONIS: No.

10 A **I think a canceled bond means that the  
11 case is completely over and there's no chance of  
12 any potential future liability. I think that's an  
13 appropriate way to say it. I don't believe the  
14 existence of a bond creates liability.**

15 Q Yeah, when a surety issues a bond it  
16 undertakes an obligation, right?

17 A **Sure, it does.**

18 Q And that's a liability, right?

19 A **But that obligation is only – it only  
20 comes to fruition if there's a claim. If there's  
21 a breach and the appeal process is exhausted,  
22 that's when Nexus has to pay. And we do every**

1 I think that -- no. I think that the  
2 surety promises the government that they will help  
3 facilitate that or pay the penal amount of the  
4 bond if it's breached.

5 I think the face value of the I352 is  
6 pretty descriptive of what a bond is and what  
7 ultimately happens as a result of it. The vast  
8 majority of bonds never breach. So to consider  
9 them a liability would be insane much the same way  
10 that RLI apportioned, what, a dollar for risk  
11 reserve or \$3 for risk reserve for these bonds. I  
12 mean, clearly you're not expecting -- your  
13 client's not expecting them all to breach if  
14 they're only reserving a dollar.

15 Q Mr. Donovan, I'm just getting to the  
16 obligation that they've agreed to.

17 A **I understand.**

18 Q So one obligation they've agreed to  
19 that you understand is to -- that they advise the  
20 government -- the Department of Homeland Security  
21 that the immigrant will appear pursuant to a  
22 notice to deliver, right?

22

24

1 single time.

2 Q When the surety -- when it issues a  
3 bond, it -- is it your understanding the surety  
4 obligates itself to the government to perform the  
5 obligations under the bond, which are to have the  
6 immigrant appear; is that correct?

7 MR. SHOREMAN: Objection.

8 Q Or respond to a notice to deliver.

9 MR. SHOREMAN: Objection. Asked and  
10 answered.

11 A **I think it's –**

12 MS. KATSANTONIS: Not asked and  
13 answered.

14 A **– ultimately the immigrant either  
15 finishes their case or the surety has to pay the  
16 penal amount of the bond.**

17 Q Okay. I got it. When the surety  
18 issues a bond, doesn't it promise the government  
19 that the immigrant will appear or will respond to  
20 a notice to deliver?

21 MR. SHOREMAN: Objection. Asked and  
22 answered.

1 MR. SHOREMAN: Objection. This is  
2 beyond the scope. The designated areas don't  
3 discuss what a surety's obligations may be to the  
4 government.

5 MR. WILLIAMS: Are you talking about  
6 exoneration, what your expert said? Or what are  
7 you talking about?

8 MS. KATSANTONIS: No. I'm talking  
9 about -- Mr. Donovan opened up the issue by saying  
10 the surety doesn't have liability, so I'm trying  
11 to understand his --

12 MR. SHOREMAN: If you want to --

13 MS. KATSANTONIS: He said -- his  
14 testimony is the surety doesn't have liability.  
15 So I'm trying to get his understanding of what the  
16 obligations are under the bond.

17 MR. SHOREMAN: Right.

18 MS. KATSANTONIS: If he's going to  
19 make -- if he's going to have that testimony, he  
20 needs to explain it.

21 MR. SHOREMAN: Well, if you're going to  
22 ask this line of questions at this point as far as

Transcript of Micheal Paul Donovan, Corporate Designee

7 (25 to 28)

Conducted on March 3, 2020

25

27

1 you've gone, he's going to be answering by his  
2 personal and not as a corporate representative.

3 MS. KATSANTONIS: Well, then his answer  
4 as to liability is as to his personal knowledge  
5 and not as a corporate representative.

6 MR. SHOREMAN: I don't know. You wrote  
7 out these areas.

8 MS. KATSANTONIS: It doesn't matter  
9 anyways. He's the president of the company. Even  
10 his personal knowledge is --

11 MR. HARRIS: You don't need to argue.  
12 Just ask your questions.

13 MS. KATSANTONIS: Okay. Moving on.

14 Q Did you understand when the surety  
15 issues a bond it undertakes the obligation to the  
16 government that it will deliver the immigrant  
17 pursuant to a notice to deliver?

18 MR. SHOREMAN: Objection. That  
19 question's been asked and answered I think three  
20 times.

21 A **It's part of the bond. It's not the  
22 end of the bond and the surety may have to pay the**

26

1 **penal amount if the bond breaches.**

2 Q Okay. But you agree that it's part of  
3 the obligation.

4 A **Yeah. And I think it's important to  
5 understand that when I talk – when I said  
6 liability, I'm talking about – and you understand  
7 what I'm talking about, very specific liability to  
8 pay. And as I've pointed out, RLI's own reserves  
9 show that there is not a feeling that these – you  
10 know, that there's a need to consider all of these  
11 bonds a liability that would have to be paid. And  
12 that was the point I made and I think you  
13 understand that, right?**

14 Q Isn't it true that one way to discharge  
15 the bond is to deliver the alien as required?

16 A **If an I-340 is requested, is issued,  
17 and there is a return date of some sort on an  
18 I-340, then, yes. If you deliver the immigrant,  
19 then that will preclude the breach, presumably if  
20 the immigrant doesn't show up for that meeting,  
21 then there would be a breach.**

22 Q And it will -- it can discharge the

1 bond, right?

2 A **Well, it's the beginning of a process,  
3 right? So a breach can be issued because a person  
4 doesn't show up for an I-340 but there are all  
5 kinds of defenses and so, you know, there's an  
6 opportunity for the individual to seek additional  
7 relief. And the vast – I mean, there are a  
8 significant number of bonds that don't – that  
9 ultimately breach that aren't – that aren't paid.**

10 **Even at RLI –**

11 Q We're talking about --

12 MR. SHOREMAN: Wait a minute.

13 A **– we've have nine successful appeals,  
14 for example, and we don't – we don't do a lot –  
15 we can't do any contesting with RLI, right.**

16 Q Sure, but we're talking about --

17 MR. WILLIAMS: Vivian, I think one of  
18 the problems is that you're not defining what you  
19 mean by discharge. Discharge from a claim being  
20 made, or what are you talking about?

21 MS. KATSANTONIS: Discharge from the  
22 bond. They have no obligation.

28

1 MR. WILLIAMS: What does discharge  
2 mean?

3 MS. KATSANTONIS: Means that the bond,  
4 there's no further obligation under the bond.

5 MR. WILLIAMS: Obligation to pay after  
6 the claim?

7 MS. KATSANTONIS: Any obligation. Any  
8 obligation at all.

9 MR. WILLIAMS: Well, then he needs to  
10 understand.

11 A **I'm talking about an obligation to pay.**

12 Q Okay. But I'm saying when the  
13 immigrant is delivered pursuant to a notice to  
14 deliver, that also can discharge the bond, right?

15 A **No. No, because just because they –  
16 just because they show up for an I-340 doesn't  
17 mean that the bond is canceled. It may be part of  
18 their responsibilities but those responsibilities  
19 are ongoing.**

20 Q What if it's a notice to remove and the  
21 alien is delivered, isn't that a -- and DHS takes  
22 custody of the immigrant, isn't that -- doesn't

Transcript of Micheal Paul Donovan, Corporate Designee

8 (29 to 32)

Conducted on March 3, 2020

29

31

1 that discharge the bond?  
2     **A Yes, that would discharge the bond**  
3     **under that circumstance. But in many of the**  
4     **circumstances where immigrants are delivered they**  
5     **are released. So they are not held. And if they**  
6     **are released it doesn't discharge the liability on**  
7     **the bond.**

8       Q Right. So one way to discharge the  
9     bond is to deliver the alien so that DHS takes the  
10 alien in custody; is that correct?

11      **A I'm going to say -- I'm not going to**  
12     **use that. I'm going to say cancel because I want**  
13     **to be consistent with what the government uses.**  
14     **So one way to cancel a bond is to have that person**  
15     **fulfill their responsibilities. They can fulfill**  
16     **those responsibility by going to court and having**  
17     **their case closed. They can fulfill those**  
18     **responsibilities by not, you know, by going into**  
19     **an I-340 hearing, for example, and being taken**  
20     **into custody.**

21       Q And when a bond is canceled, the surety  
22 has no further obligation under the bond, correct?

30

32

1     **A An obligation to?**

2       Q Any obligation. When a bond is  
3     canceled, a surety has no further obligation under  
4     the bond?

5     **A Right. Well, I would say when a bond**  
6     **is canceled the immigrant has no further**  
7     **obligation.**

8       Q That's fine. But what about the  
9     surety?

10      **A Again, as I understand it, the surety,**  
11     **RLI certainly doesn't go and pick people up and**  
12     **take them to hearings, right, nobody does that**  
13     **that's, you know...**

14       Q Mr. Donovan, it's a simple question.  
15 When a surety bond -- when a bond is canceled the  
16 surety has no further obligation under the bond,  
17 right?

18       MR. SHOREMAN: Objection. Objection.  
19 Objection. It may be a simple question but it's  
20 not within --

21       MS. KATSANTONIS: It is.

22       MR. SHOREMAN: -- the scope of this

1     30(b)(6).

2       MS. KATSANTONIS: Mr. Shoreman, there's  
3     so many bullet points that that goes to as well as  
4     Mr. Donovan's own testimony. It's a simple  
5     question.

6       MR. SHOREMAN: It's not a simple  
7     question because you're asking him now -- he can  
8     only testify to this on his personal knowledge and  
9     not as a corporate representative.

10      MS. KATSANTONIS: That's fine.

11      MR. SHOREMAN: If you want to go ahead  
12 with that, marking the fact that you took seven  
13 hours of this man's deposition last week.

14      MS. KATSANTONIS: That's okay.

15      MR. SHOREMAN: It's not okay because  
16 we're not just going to go back and replow.

17      MR. HARRIS: Actually, you're wasting  
18 our time and extending this deposition with your  
19 lengthy speaking objection.

20      MR. SHOREMAN: But you told me  
21 yesterday, Mr. Harris, that was going to take  
22 seven hours.

1       MR. HARRIS: You can object to form,  
2     that's what the rules allow.

3       MR. SHOREMAN: No.

4       MS. KATSANTONIS: We're going to go off  
5     the record.

6       THE VIDEOGRAPHER: We are going off the  
7     record at 11:48.

8       (Recess taken.)

9       THE VIDEOGRAPHER: We are back on the  
10 record at 11:52.

11 BY MS. KATSANTONIS:

12       Q Okay. Mr. Donovan, we took a break, I  
13 was asking you your understanding of when a bond  
14 is canceled, does the surety have no further  
15 obligations under the bond?

16       MR. SHOREMAN: Objection. Asked and  
17 answered.

18      **A Yeah, I think I've answered that**  
19     **question. And specifically, the surety's**  
20     **obligation is to pay if the bond is breached and**  
21     **there are no further appeals, okay? Now, the**  
22     **immigrant has an obligation as a bonded principal,**

Transcript of Micheal Paul Donovan, Corporate Designee

9 (33 to 36)

Conducted on March 3, 2020

33

1 and their obligation will stop when their bond is  
2 canceled.

3 Q You testified that an immigrant, one of  
4 the conditions of the bond is to deliver the  
5 alien, the immigrant, right?

6 A There is a notice to deliver that can  
7 be issued. It's not a condition of every bond,  
8 no.

9 Q Well, it's a condition of a vast  
10 majority of the bonds, right, a notice to deliver?

11 A No. The vast majority of the bonds end  
12 without any notice of action whatsoever. No, the  
13 vast majority of bonds cancel because people go  
14 through the process. The people that get --  
15 you're talking about people who --

16 MR. SHOREMAN: Wait a minute, would you  
17 mind not interrupting the witness, please.

18 MS. KATSANTONIS: No, I know.

19 A You're talking about people who have  
20 I340s. An I-340 is issued by a bail -- by a bond  
21 unit officer in the Department of Homeland  
22 Security. When there is some kind of issue, there

35  
1 obligation anyway because the bond hasn't  
2 breached, right?

3 Q I'm talking about --

4 A So the surety --

5 MR. SHOREMAN: Wait a minute,  
6 objection.

7 Would you please let this witness  
8 finish his answer?

9 MS. KATSANTONIS: I'm just --

10 MR. SHOREMAN: You know, you jumped in.  
11 He was in the middle of an answer. And this is --

12 A My job, pursuant to the contract, is to  
13 stand in front of RLI, right? My job is to pay  
14 when there's a final bond breach. That's what we  
15 do every single time.

16 Q Okay. So my question is, again, once  
17 the bond -- an immigrant is taken into custody and  
18 an I391 form bond cancellation is issued, the  
19 surety has no further obligation under its bond to  
20 your understanding; is that correct?

21 A Well, the surety wouldn't have any  
22 obligation to the bond anyway unless it was

34

1 might have been, it might be that they didn't go  
2 to court, which is a serious issue. It might be  
3 that law enforcement wants to talk to them about  
4 an issue that's going on. It might be that ICE  
5 has a conversation that they want to have with  
6 them. It could be any number of things. That  
7 I-340 then compels that person to come and meet  
8 with an ICE officer. That doesn't happen in every  
9 bond.

10 Q Right.

11 A It only happens in certain bonds.

12 Q And what percentage of bonds receive  
13 notice to deliver?

14 A I have no idea. We don't track that.

15 Q Okay. And what I'm asking you is if an  
16 immigrant is delivered and taken into custody, we  
17 talked about that, that cancels the bonds, right?

18 A That would cancel the bond.

19 Q Right. And in that scenario, if the  
20 bond is canceled doesn't that mean the surety has  
21 no further obligation?

22 A Right. But the surety doesn't have an

36  
1 breached and had to pay.

2 Q So the answer is yes.

3 MR. SHOREMAN: Objection. Objection.

4 That is not a proper question.

5 Q Okay. An I-340 notice is a demand on  
6 the bond, correct?

7 A It's a demand for the individual to  
8 appear before ICE.

9 Q It's a demand to deliver, right?

10 A It's a notice to deliver. A demand is  
11 on the individual.

12 Q And the surety receives a copy of the  
13 I-340 notice?

14 A The surety is the -- the obligor or the  
15 co-obligor receive it. The only way we get it is  
16 if the surety sends it to us.

17 Q Does an I-340 notice give a co-obligor  
18 the right to arrest a principal and turn him or  
19 her over to ICE?

20 MR. SHOREMAN: Objection. That calls  
21 for a legal conclusion.

22 A It is -- I think it's unclear. The law

Transcript of Micheal Paul Donovan, Corporate Designee

10 (37 to 40)

Conducted on March 3, 2020

37

1 is really gray in the area of bounty hunting and  
2 arresting individuals and it can vary state by  
3 state by state. For example, in Florida, if your  
4 bond principal is from Florida for example, you  
5 would have to hire a bail agent in Florida. And  
6 if the bond was posted by a bail agent not  
7 licensed in Florida, you would have no authority  
8 because state law would prohibit it. So there's  
9 just a ton of different rules and regulations and  
10 it's what makes me thankful that I'm not a bail  
11 agent and I never have to worry about doing that.

12 Q All right. So in paragraph 50 of  
13 Nexus' amended counterclaim, if Nexus stated the  
14 only legal effect of an I-340 notice is that it  
15 gives the co-obligors the right to arrest the  
16 principal and turn him or her over to ICE custody  
17 without further notice, that's not an accurate  
18 statement?

19 A Oh, it is. I'm not a co-obligor.

20 Q Okay.

21 A I said we don't – I said thankfully I  
22 don't do that. I'm not a bail agent. I'm not a

39  
1 for the right reasons. We're not cops or bounty  
2 hunters, and we don't want to be. And in the  
3 instance where it was done, it was bail agents  
4 executing it. The co-obligor was the person  
5 responsible.

6 Q What was the one instance?

7 A It's a very costly situation that  
8 doesn't make sense.

9 The one situation involved a client who  
10 had been accused of murdering her husband in her  
11 home country. She comes to the United States and  
12 had been released and her family member -- her  
13 family members contacted us and said she was an  
14 active gang member.

15 Q Is this the one that you talked about  
16 in your deposition on Wednesday?

17 A Did I talk about it in my deposition on  
18 Wednesday, Ms. Katsantonis?

19 Q I don't know. Do you know who the name  
20 of the --

21 A I was ill, I don't remember.

22 Q Do you know who the name of the

38

1 co-obligor. I'll never be a co-obligor on these  
2 bonds and I will never arrest an individual.  
3 There are enough police in this world. We don't  
4 need another one.

5 Q Is there a standing directive at Nexus  
6 that you would not deliver -- arrest or deliver an  
7 alien?

8 A We have a policy at Nexus that if we  
9 are – if we receive a request related to an issue  
10 involving a remand, for example, a person who we  
11 identity is likely not to go to court, or perhaps  
12 a person whose family member has requested that  
13 something be done because they're afraid for their  
14 safety or others.

15 In very limited situations, our policy  
16 manual provides a function by which our advisory  
17 board will consider on a case-by-case basis  
18 individual circumstances. Only in Nexus' history  
19 have we elected to do that only one time. And it  
20 is something that we very much don't want to have  
21 to do. We believe the success of our program is  
22 built on convincing people to do the right thing

40  
1 immigrant is?

2 A [REDACTED]

3 Q Okay. So that's different than one  
4 that we talked about on Wednesday.

5 Do you recall that?

6 A Who were we talking about on Wednesday?  
7 Because there's a difference between a person  
8 being arrested and someone coming into an I-340  
9 meeting, you understand.

10 Q Don't you escort some of the immigrants  
11 to deliver them pursuant to a notice to deliver?

12 A No, I think that -- and let's -- I'm  
13 going to be very clear here. Please don't  
14 misstate my language, especially in this area,  
15 it's very offensive. The idea that you would  
16 assert that we, by accompanying an immigrant who's  
17 terrified to a meeting like this that we're  
18 somehow acting as an agent of arrest is absolutely  
19 offensive and reprehensible.

20 Q What's offensive? My term as --

21 A The idea that we would -- we help  
22 people come to these meetings and deal with their

Transcript of Micheal Paul Donovan, Corporate Designee

11 (41 to 44)

Conducted on March 3, 2020

41

43

1 life situations. We're not, you know, throwing  
 2 people in the back of Suburbans and putting  
 3 handcuffs on them. So I want to make sure  
 4 there's -- I want to make sure your question to  
 5 me, Ms. Katsantonis, was whether or not I remember  
 6 from my deposition saying that I had done this  
 7 previously. And that is an inappropriate  
 8 restatement of my deposition testimony and I find  
 9 that offensive.

10 Q Was it my use of the term escort that  
 11 offended you?

12 A No. It was your implication that I had  
 13 somehow indicated that we had done this particular  
 14 thing, which was an arrest.

15 Q All I asked is did you escort?

16 A Ms. Katsantonis, now you're  
 17 interrupting me. What I said, because I want to  
 18 be very clear on the record because I don't want  
 19 there to be a misunderstanding.

20 What I said was that we had, the  
 21 function of this arrest, it happened one time.  
 22 Then you said, "Do you remember your deposition

1 MR. SHOREMAN: Okay.

2 A We frequently appear –

3 MS. KATSANTONIS: That was my question.  
 4 MR. SHOREMAN: Okay.

5 A We frequently appear with immigrants  
 6 who are appearing pursuant to an I-340 but they're  
 7 appearing to an I-340 by their choice.

8 Q And do you transport them in those  
 9 situations?

10 A We do provide travel from time to time  
 11 when it's requested.

12 I'm going to take a real quick bio  
 13 break since you're taking a second to look at  
 14 documents, okay?

15 MS. KATSANTONIS: Okay.

16 THE VIDEOGRAPHER: We are going off the  
 17 record at 12:04.

18 (Recess taken.)

19 THE VIDEOGRAPHER: We are back on the  
 20 record at 12:12.

21 BY MS. KATSANTONIS:

22 Q At the beginning of your deposition we

44

1 testimony when you told me about someone  
 2 different?"

3 Now, Ms. Katsantonis, that is an  
 4 inference that I had testified inappropriately or  
 5 perhaps lied. And that's absolutely inappropriate  
 6 and I'm calling you out on it because it's wrong.

7 Q Good for you but I'm trying to  
 8 understand the name -- whether it's the same  
 9 person.

10 MR. SHOREMAN: I'm trying.

11 A I would just appreciate it if you  
 12 wouldn't restate my testimony in such a way as to  
 13 misstate it, please. Thank you.

14 MR. SHOREMAN: Actually the question  
 15 that the witness is answering went to the  
 16 company's policy on remand, which he was  
 17 describing before the line of questioning about  
 18 his prior testimony.

19 MS. KATSANTONIS: Right. I'm trying to  
 20 understand, I asked whether or not Nexus escorted  
 21 immigrants back to DHS pursuant to a notice of  
 22 deliver.

1 were talking about how many bonds had been issued  
 2 for the Nexus Program, and I believe you told me  
 3 24,000?

4 A 23,234 is the exact number that I have.

5 Q 23,000 --

6 A According to our records. 23,234.

7 Q Okay.

8 A And to just flag it that that's what  
 9 our system shows. The reality is there were a few  
 10 hundred bonds that -- before we started using  
 11 where you would be able to find them in Capsule  
 12 and be able to sort them. So the universe doesn't  
 13 include those but they'd long be canceled now  
 14 anyway.

15 Q So RLI contends that it has issued  
 16 2,486 bonds. Yeah.

17 Do you agree with that number?

18 A That's my understanding.

19 Q Okay. All right. And RLI contends  
 20 that the aggregate penal sum of the 2,486 bonds  
 21 issued is 30,222,950.

22 Do you agree with that?

Transcript of Micheal Paul Donovan, Corporate Designee

12 (45 to 48)

Conducted on March 3, 2020

45

47

1     **A** **That's my understanding.**

2     Q   How many of RLI's 2,486 bonds has DHS  
3 issued one or more formal notice to deliver?

4     **A** **I'm going to have to consult records to**  
5 **answer that.**

6     Q   That's fine.

7     **A** **The challenge is that I think even if I**  
8 **can pull the notices, it's going to take some**  
9 **time, which I'm happy to do, but it might take --**  
10 **I mean, it would be pulling notices out of this**  
11 **box so I don't want to take up an hour of your**  
12 **deposition time but pulling these. I don't know**  
13 **that I would be able -- because we don't keep**  
14 **track of the number of notices per bond, so it's**  
15 **not something we keep track of so I would have to**  
16 **go and get that data. I'm happy to do it but I**  
17 **don't want to waste your time.**

18    Q   What data would you look at?

19    **A** **I have, and in fact I'm going to be**  
20 **producing to you, these are the breach binders.**  
21 **Do you remember when you did your special master**  
22 **visit to the breach office and you had identified**

46           **1 binders that you were interested in receiving?**  
2 These are the binders and they include all the  
3 notices for the program. So I could conceivably  
4 go through it and count them, but I'm just telling  
5 you that that's going to take a while and I don't  
6 want to waste your time.

7     Q   That's fine.

8     **A** **If it's that important I'm happy to do**  
9 **it.**

10    Q   So sitting here today you don't know  
11 the number, correct?

12    **A** **It's not something that we track.**

13    Q   And how many of RLI's 2,486 bonds have  
14 DHS issued one or more formal bond breach notice  
15 or I-340 notice?

16    **A** **So, we are reliant upon receiving those**  
17 **notices from RLI. So we have received whatever**  
18 **RLI has sent us as it relates to those notices. I**  
19 **don't have the total number off the top of my head**  
20 **because it's not something that we track and**  
21 **store. But I can certainly find it for you by**  
22 **pulling through the breach notebooks if you'd like**

1     **me to do that.**

2     Q   So sitting here today you don't know  
3 how many of the bonds, the RLI bonds, issued  
4 have -- that DHS has issued one or more formal  
5 bond breach notices, right?

6     **MR. SHOREMAN:** Objection. He can --

7     **A** **I do have that --**

8     **MR. SHOREMAN:** Objection. Objection.  
9 That information will be provided to you if you  
10 would like him to take the time to go through the  
11 data he brought with him.

12    **MS. KATSANTONIS:** Right. But I'm  
13 saying he said it's going to take him an hour or  
14 so to read through it. And I'm saying sitting  
15 here right now he doesn't know the number,  
16 correct?

17    **MR. SHOREMAN:** Not off the top of his  
18 head, no.

19    **A** **What I do know is that we've paid 290**  
20 **invoices for a total of \$3,212,883.67 which is**  
21 **consistent with what we track, which is**  
22 **performance based on whether there's a final claim**

48           **1 and a bond breach has to be paid.**

2     **So that's what I can tell you. Those**  
3 **are based on numbers that we keep track of. Now,**  
4 **if you need me to get numbers that we don't keep**  
5 **track of I can do that but it's going to take a**  
6 **little bit of time. I certainly have the**  
7 **information, though.**

8     Q   Well, you have no reason to dispute  
9 what numbers RLI has provided?

10    **A** **I don't know necessarily – if you have**  
11 **something you want to put in front of me from a**  
12 **document perspective, I can certainly confirm it.**

13    Q   Well, if I gave you a document that  
14 said RLI has received 700 notices to deliver, you  
15 don't have any reason to dispute that other than  
16 you'd have to go through that binder?

17    **A** **I would have to go through that binder**  
18 **to check. Although I certainly would say that we**  
19 **have had to pay 290 invoices for RLI and a total**  
20 **sum of \$3,212,833.67.**

21    Q   Okay. And so sitting here today you  
22 also don't know how many of RLI's bonds DHS has

Transcript of Micheal Paul Donovan, Corporate Designee

13 (49 to 52)

Conducted on March 3, 2020

49

51

1 issued one or more bond breach invoice for?  
2     **A So I do know. I have that information**  
3 **but I would have to calculate it as it's not**  
4 **something that we keep in the normal course of**  
5 **business. I'm happy to do it. I don't want to**  
6 **come to this deposition saying I don't know about**  
7 **anything. So I have the documentation here and if**  
8 **you want me to dig through it I'm happy to do it**  
9 **but it isn't a number that we keep in the normal**  
10 **course of business so I would have to -- I would**  
11 **have to get it for you. But I'm more than happy**  
12 **to do it if you want me to. I'll spend the next**  
13 **three hours digging through a box.**

14     **Q** So RLI contends that as of March 1st,  
15 2020 DHS has issued -- hold on.

16         Okay. So RLI contends that 319 of the  
17 bonds have been paid based on breach invoices.

18         Do you understand why there's a  
19 difference between the 290 you're stating versus  
20 the 319?

21     **A There may be bonds that were refunded**  
22 **or otherwise canceled after they were paid. I**

50

1 **wouldn't know that since RLI has stopped sending**  
2 **us bond cancellations as of February of 2018. So**  
3 **since we don't get that documentation from your**  
4 **client anymore, I am only relying -- I'm relying**  
5 **on the information we get from your client and the**  
6 **information that you process, you know, pursuant**  
7 **to the injunctive order. So we're paying what you**  
8 **represent to us is due, your client, right, as we**  
9 **go along we always do that.**

10         What we have record of is 290 invoices  
11 for a total of \$3,212,883.67. If you have a  
12 different record, I'm happy to look at it.

13     **Q** If a bond is canceled there's no  
14 payment, right?

15     **A Well, that's correct. Yeah, the**  
16 **only -- only after a breach and a final claim is**  
17 **made is -- are you required to pay.**

18     **Q** Uh-huh.

19         So sitting here today, without going  
20 through your binder, spending a couple of hours to  
21 go through your binders, you can't tell us how  
22 many of the RLI bonds has DHS issued one or more

1 invoices?

2     **A Well, considering it seems to be an**  
3 **important part of your examination, I would like**  
4 **to go and look. In other words, I don't want you**  
5 **to ask a question that I can't answer. You've**  
6 **asked me the question in such a way as to say**  
7 **isn't it true I can't answer it; no, it's not, I**  
8 **can answer it and I can try to go through this box**  
9 **as quickly as possible. I just gave you a**  
10 **forewarning that I thought it would be take a**  
11 **little bit of time and I didn't want to take your**  
12 **time. That's all, Ms. Katsantonis.**

13     **Q** No, I appreciate it. I'm just trying  
14 to say you didn't do it -- before sitting here  
15 today you haven't done that work yet.

16     **MR. SHOREMAN:** Objection. This witness  
17 testified as to the number of invoices RLI has  
18 paid, 290 invoices.

19     **MS. KATSANTONIS:** That's not the  
20 question.

21     **MR. SHOREMAN:** Well, you're asking him  
22 how many --

52

1     **MS. KATSANTONIS:** How many have we  
2 received -- how many -- on the RLI bonds how many  
3 invoices have we received.

4     **MR. SHOREMAN:** How many invoices has  
5 RLI received?

6     **MS. KATSANTONIS:** And Nexus has a  
7 record. How many were issued?

8     **A** I think it's important to understand  
9 this is part of our -- I think this is part of the  
10 misunderstanding, you know, there are a lot of  
11 misunderstandings. But the idea even that an  
12 invoice, you're saying it yourself, you have 319  
13 versus 290. You can't possibly explain the  
14 discrepancy. You have an injunctive order. It's  
15 not as if you would have allowed 29 bonds to go  
16 unpaid. So, like, you understand that, you know,  
17 from the perspective of the record keeping, what  
18 we have is what we have. We keep track of the  
19 bonds that we pay because that's how we determine  
20 our fail rate.

21     **Q** Right?

22     **A** We don't keep track of multiple

Transcript of Micheal Paul Donovan, Corporate Designee

14 (53 to 56)

Conducted on March 3, 2020

53

1 notices. We don't keep track of how many notices  
2 we received on a certain bond book or anything  
3 like that. It's just not something that we keep  
4 track of, Ms. Katsantonis, but I'm happy to get it  
5 for you if you need me to.

6 Q Okay. I get -- I understand your  
7 testimony about what you don't track, okay? So  
8 what I'm trying to find out today is, without  
9 spending another hour or three hours or whatever  
10 it would take, you do not know how many of the RLI  
11 bonds DHS has issued one or more bond breach  
12 invoices, correct?

13 A No, I do have that here. I'll get it,  
14 okay.

15 Q No, I said without spending an hour.

16 A Well, I'll try not to take an hour.  
17 But I came prepared to testify. So I'm going to  
18 give you your answers. If it's a question that  
19 you're asking, I will give you the answer. Just  
20 let me --

21 Q How long do you think it would take you  
22 to find out how many invoices have been issued on

54 1 an RLI bond?

2 A 15, 20 minutes.

3 Q Okay. We'll do it at a break then.

4 RLI contends that as of March 1st,  
5 2020, the aggregate penal sum of the bonds for  
6 which an invoice has been paid is 3.625 million.

7 A No, that's not my records. My records  
8 are 3.212 million.

9 Q Okay. And which specific records are  
10 you relying on for the 290 breached invoices that  
11 were paid?

12 A Our internal records, which I'm  
13 producing a copy of today, including a spreadsheet  
14 and our breach binders where all the supporting  
15 documentation is.

16 Q And the spreadsheet was prepared when?

17 A This spreadsheet was prepared – it's  
18 maybe March 2nd, so yesterday.

19 Q And is it based on computer-generated  
20 files? Where was the data extracted to create the  
21 spreadsheet?

22 A The breach binders and the electronic

55

1 data we have of the breaches that we received.  
2 So we have the breach binders, which  
3 I've made copies of for you here and we're  
4 producing. It is the detail of what you would  
5 find in the spreadsheet.

6 Q Right. So will the breach binders that  
7 you have reflect all 290 invoices which you  
8 contend have been paid?

9 A They will.

10 Q Okay.

11 A That's where we got them.

12 Q All right. And what electronic data  
13 did you review also for the spreadsheet?

14 A I believe we reviewed Laura Piisanen's  
15 spreadsheets that she has sent over a period of  
16 the last few years.

17 Q Okay.

18 A I can never say her name. I apologize  
19 for butchering her name.

20 Q Did you review the spreadsheet that was  
21 prepared and provided to Erik Schneider during his  
22 deposition on February 20th of this year?

56

1 A That was provided by RLI?

2 Q Uh-huh.

3 A No. Would you like to –

4 Q No.

5 A I'm not a hundred percent sure. What  
6 spreadsheet are you talking about? I've reviewed  
7 many, many spreadsheets, but I don't know.

8 Q During the deposition of Mr. Schneider,  
9 a spreadsheet was presented to him showing all of  
10 the -- showing the status of the RLI's bonds?

11 A Do you have it? Can I see it?

12 Q Do you know whether you reviewed that?

13 A I won't know until I see the document.  
14 I don't know off the top of my head, with all due  
15 respect.

16 Q All right. And of the RLI bond breach  
17 invoices that were paid, do you know how many of  
18 them were paid by Nexus within 30 days of the  
19 invoice date?

20 A No, we don't actually track that. And  
21 as a part of that category is concerned the amount  
22 of time that it would take for us to go back and

Transcript of Micheal Paul Donovan, Corporate Designee

15 (57 to 60)

Conducted on March 3, 2020

57

59

1 calculate that was, you know, just -- it was  
2 impossible given the fact that we'd have to go and  
3 actually look for checks, you know, dates on  
4 checks to try to match it up. So I apologize,  
5 that isn't something we keep in the normal course  
6 of business.

7 Q Okay. So you are not prepared to  
8 answer questions on how many of the bond breach  
9 invoices were paid between, let's say, 31 and 60  
10 days of the invoice date, 61-120 days of the bond  
11 breach invoice or more than 120 days after the  
12 invoice date?

13 MR. SHOREMAN: Objection.

14 A I'm prep --

15 MR. SHOREMAN: Objection. The witness  
16 has testified that the company does not maintain  
17 those records.

18 MS. KATSANTONIS: Yep.

19 A I'm prepared to testify that we paid  
20 290 invoices totaling \$3.212 million.

21 Q Right. But you can't give me a timing  
22 of when those invoices were paid?

1 after an invoice has been issued?

2 A Nexus typically waits until we are a  
3 hundred percent certain that there is no  
4 possibility that the person's case may be  
5 reopened, that they otherwise may be able to  
6 continue on.

7 So we do err on the side of caution to  
8 ensure that we don't pay bond breaches that would  
9 otherwise then abridge the person's opportunities  
10 to be able to proceed on bond with their case,  
11 right?

12 Q So --

13 A So we are very -- so we pay attention  
14 to that, for sure.

15 Q You're a late pay.

16 A I don't think we're a late pay. I  
17 think we pay when we have to. When there is a --  
18 I mean, when there is a claim, a final claim on  
19 the bond.

20 Q What do you consider the final claim?

21 A The final claim is a claim made against  
22 the bond when the appellate process has completely

58

60

1 A We don't keep those records. We don't  
2 keep records based on that.

3 Q Isn't it -- you don't keep records so  
4 you can't tell me sitting here today whether the  
5 invoices were paid within 31 or 60, or 90 or 120  
6 days from the invoice date; is that correct?

7 A That's correct. Because it's  
8 inconsequential. It's a hundred percent based on  
9 what is happening in an individual case.

10 Q Right?

11 A It's not a metric that we would look  
12 to. It's not a KPI, it's not something we would  
13 look at saying oh, we're doing better if we do  
14 this. Because it's dependent upon an individual  
15 case. If a person has a claim of relief and they,  
16 you know, they got mixed up and they actually have  
17 court and they've got this erroneous breach, you  
18 know, they -- we want to make sure we are able to  
19 help them, right?

20 Q Uh-huh.

21 Does Nexus routinely not pay the  
22 invoices until at or about the 120-day period

1 run. Right? So there's no further --

2 Q Who makes the final claim on the bond  
3 after the appellate process? How is that made?

4 A It's a claim in favor of the  
5 government. The government --

6 Q How is the claim made? What does it  
7 look like?

8 A It's an invoice.

9 Q So the regular invoice is the final  
10 claim on the bond?

11 A Huh-uh. A final claim on a bond is a  
12 final invoice when all of the appellate process  
13 has been exhausted.

14 Q How does that invoice look?

15 A And you can consult the CFR if you want  
16 to understand what a final claim is. It's in  
17 there.

18 Q No, I want to understand what the final  
19 invoice -- have we --

20 A My opinion is consistent with the --

21 Q Have we received any final invoices?

22 A -- CFR.

Transcript of Micheal Paul Donovan, Corporate Designee

16 (61 to 64)

Conducted on March 3, 2020

61

63

1 Q Have we received any final invoices on  
2 any RLI bonds?

3 A I believe you've received Treasury  
4 referral notices on RLI bonds.

5 Q Well, is that the final invoice?

6 A No. I think there's a whole other  
7 process upon Treasury referral that RLI has never  
8 been subjected to thanks to Nexus' ability to  
9 stand in front of it --

10 Q No. I know, but you said --

11 A I'm sorry, and perform pursuant to the  
12 indemnity agreement over the last three or four  
13 years, which we have every single time.

14 Q Well, you said that a claim -- that  
15 the -- a claim doesn't have to be paid until you  
16 get a final invoice. So I'm trying to understand  
17 what is this final invoice?

18 MR. SHOREMAN: Objection.

19 Q What does it look like? Is it in  
20 writing? What is it?

21 MR. SHOREMAN: Objection. You have  
22 misstated his testimony.

1 been exhausted.

2 Q Okay.

3 A That's a final claim. In favor of  
4 the --

5 Q And when do you know when all the  
6 appeal opportunities have been exhausted?

7 A So we know that there's a window of  
8 time that you have to seek an appeal or a motion  
9 to reconsider. If you file an appeal within 30 --  
10 within 30 days, you --

11 Q Within 30 days of a notice to breach.

12 A That's right.

13 Q The breach notice, right?

14 A Then you have a timely appeal that goes  
15 through the process of the AAO. If you file a  
16 nontimely appeal it can be considered by the AAO  
17 as a motion to reconsider. And sometimes they  
18 will take those cases on.

19 Q And sometimes they won't.

20 A And sometimes they won't.

21 Q And how do you -- how do you know when  
22 a claim becomes final?

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64

1 Q Okay.

2 A My concern is that, you know, my  
3 testimony is my own and I want to make sure that  
4 you ask questions and say isn't it -- do you mean  
5 this? Yes. I want to be very clear,  
6 Ms. Katsantonis, I'm not trying to be rude but if  
7 I think that you are misstating my testimony I'm  
8 going to stop and back up because I want to make  
9 sure we don't do that.

10 Q Absolutely. I want you to get Nexus'  
11 testimony on the record accurately and to the best  
12 of your knowledge and belief and I'm happy to make  
13 sure that it's clear.

14 A So --

15 Q But you said that it -- that an invoice  
16 doesn't have to be paid until there's a final  
17 claim and there's a final invoice. So I'm trying  
18 to understand what this is? What is the final  
19 claim? What does it look like? What is the  
20 invoice that we're all waiting for?

21 A Right. A final claim is a breach on a  
22 bond where all of the appeal opportunities have

1 A So, again, a claim is final when  
2 there's a breach, a final determination is made on  
3 that breach and the appellate process is run.

4 It's a --

5 Q So how do you know?

6 A I'm answering the same -- I mean, I'm  
7 answering the question the same way.

8 Q Yeah.

9 A I don't know what -- what are you  
10 asking me? Because the appeal --

11 Q When does the appellate process run?  
12 How do you know?

13 A Gotcha. So it's a certain window after  
14 the breach occurs. So you get a notice of a  
15 breach, you have the ability to file an appeal,  
16 okay? You can file an appeal within 30 days and  
17 then have a timely filed appeal before the AAO.  
18 You can file an appeal that's justified outside of  
19 the window and it can be considered as a motion to  
20 reopen.

21 Q Right. But it cannot be.

22 So my question is when do you know that

Transcript of Micheal Paul Donovan, Corporate Designee

17 (65 to 68)

Conducted on March 3, 2020

65

1 the appeal process is done, it's run and now it's  
2 time to pay?

3 A So if I get a 797C then I know that the  
4 AAO has received that appeal and I know pursuant  
5 to the CFR that there's no final claim and that  
6 that breach isn't due.

7 Q What do you mean that there's no final  
8 claim?

9 A There's no final claim. Until the  
10 appeal is up --

11 Q Right. I'm trying to find out --

12 A You can't even pay the breach.

13 Q I'm trying to find out when you know  
14 the appeal is up. How do I know its up?

15 A You get a notice of action from the  
16 AAO. You can get a notice of action from the AAO.

17 Q So the AAO denies the appeal, then is  
18 the appeal over?

19 A You can appeal to the district court.

20 So there is an appellate process beyond that. But  
21 my perspective is that once the AAO -- our policy  
22 generally is once the AAO dismisses an appeal, we

66 1 pay it. And we do that -- in fact, last month we  
2 did that to four or five RLI bonds.

3 Q So once the appeal process is run and  
4 there's an AAO decision, then there's no further  
5 basis to delay paying an invoice; is that correct?

6 A If there is a motion to reconsider, if  
7 there is a circumstance where an individual is  
8 seeking some kind of relief, from time to time,  
9 there are one-off situations that we look at.

10 Q Right, but generally?

11 A We're glad to say that we always stand  
12 and perform personally to the indemnity agreement.  
13 We do that every time.

14 Q So generally, though, once an AAO  
15 appeal is denied, then there's no basis not to pay  
16 the invoice, correct?

17 A Then the invoice is due.

18 Q Okay.

19 A I won't say that there's no basis not  
20 no pay because I think that there are certain  
21 circumstances where an individual, a human error  
22 is an issue, and we know that it's going to be

67 1 fixed. So if we know that they're ultimately  
2 going to cancel it or if the judge is going to  
3 reopen the case, these are one-off situations.  
4 But I just want to be careful. I want to be  
5 consistent and I want to be clear in my testimony.

6 Q All right.

7 THE VIDEOGRAPHER: Can you take the  
8 mike off and put it back on again. Okay.

9 MS. KATSANTONIS: Is that good?

10 THE VIDEOGRAPHER: That's good.  
11 (Donovan Exhibit 2 marked for  
12 identification and attached to the transcript.)

13 Q I'm going to show you an exhibit that  
14 was presented to court on January 22nd, 2020.  
15 Have you seen this exhibit before, Mr. Donovan?

16 A I may have reviewed it. I don't  
17 remember exactly. But I may have seen it. I  
18 believe I have, yes.

19 Q Okay.

20 A This was filed at the hearing, right?  
21 In advance of the hearing.

22 Q It was presented and provided as

68 1 evidence during the hearing.

2 A Got it. Okay. Then I think I have  
3 seen it.

4 Q Okay. And did you or Nexus endeavor to  
5 review these facts to confirm them as true?

6 A I did not but that's because,  
7 Ms. Katsantonis, I couldn't imagine that you would  
8 file something with the court that was erroneous,  
9 so I'm assuming that this is correct. And I  
10 believe you're a professional and I believe you're  
11 a great person so I'm sure you wouldn't have lied  
12 to the court, so I would presume this is correct.

13 Q Thank you. So as you sit here today,  
14 you have no reason to dispute the accuracy of the  
15 data in this chart?

16 A Absolutely no reason to believe that  
17 you would put a forged document in front of the  
18 court. No reason at all.

19 Q All right. Thank you.

20 A You're welcome.

21 Q So I'm looking at it and I'm looking  
22 specifically at first --

Transcript of Micheal Paul Donovan, Corporate Designee

18 (69 to 72)

Conducted on March 3, 2020

69

71

1   **A I'm still offended by the title.**

2   **Q First --**

3           MR. SHOREMAN: Oh, yeah.

4   **Q Looking at page 2.**

5   **A Yes, ma'am.**

6   **Q So looking at, like, starting with**  
7   August, I'm going to start with the ones we know  
8   AAO appeal was filed for these invoices?

9   **A Okay.**

10   **Q The invoice dates were June 25th and**  
11   payments weren't received until October or  
12   November on the first three, August 9th,  
13   September 10th, September 10th.

14       Do you have an understanding as to why  
15   those invoices would not have been paid prior to  
16   the 120 Treasury referral date?

17   **A So not off the top of my head, but I**  
18   **would have to -- so if there is a client who has**  
19   **filed a motion to reopen with their immigration**  
20   **lawyer sometimes we won't file an AAO appeal**  
21   **because once the motion to reopen is granted, the**  
22   **bond unit officer typically reinstates the bond or**

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72

1   **canceled the breach.**

2   **Q But you don't have any reason --**

3   **A I'm happy to look them up.**

4   **Q -- to know that.**

5   **A I'm happy to look them up and can**  
6   **probably do that pretty quick.**

7   **Q But you don't know right now, correct?**

8   **A Not off the top of my head as you**  
9   **pointed out in the three lines on that**  
10   **spreadsheet, no.**

11   **Q All right. So looking starting at the**  
12   bottom, September 10th.

13   **A Yes, ma'am.**

14   **Q So this one is an invoice was**  
15   July 30th, do you see that the AAO appeal was  
16   already dismissed on July 23rd prior to the  
17   invoice date being issued?

18   **A I do see that, yeah.**

19   **Q Okay. And so contrary, I think to what**  
20   you just stated earlier, isn't it that Nexus did  
21   not make that payment until almost four months  
22   later from the invoice date?

1   **A Well, it certainly appears to be**  
2   **correct vis-à-vis the dates on this paper although**  
3   **I think it's important, Ms. Katsantonis, to**  
4   **understand that in these cases where you have an**  
5   **AAO appeal dismissed almost simultaneously with**  
6   **the date that it's due, sometimes if we're not --**  
7   **sometimes it takes a while to get those adverse**  
8   **action notices and we're relying on service of**  
9   **notice from RLI or from the co-obligor. So what**  
10   **I'm going to tell you is that from time to time we**  
11   **have invoices where we appeal them, the appeal is**  
12   **dismissed, we don't know that the appeal is**  
13   **dismissed and then we get a final invoice or the**  
14   **Treasury referral and we look at it and we go oh,**  
15   **that appeal is dismissed. This may be that case**  
16   **but I again wouldn't know without going in and**  
17   **looking at the individual client.**

18   **Q Well, we can show you, and it was**  
19   **presented at the hearing that, RLI was giving**  
20   **continuous notice to Nexus to pay these bond**  
21   **breaches. So I don't think that was the scenario.**

22   **A Listen, I'm not going to contest that**

1   **RLI gives us continuous notices to pay bond**  
2   **breaches. What I will say is that if we thought**  
3   **that the breach was appealed, we wouldn't have**  
4   **paid it until we knew that it wasn't appealed.**  
5   **And so if we didn't -- I don't know when we got**  
6   **the notice of action and I'd have to look it up to**  
7   **see when we got the notice of action to be able to**  
8   **answer this question more intelligently. But**  
9   **certainly I'm telling you that it often happens**  
10   **where if we don't get -- if we don't get notice of**  
11   **the adverse action, we don't know that the appeal**  
12   **is brought in until we get that notice.**

13   **Q Well, if RLI had information that the**  
14   **appeal had run, you certainly had the information**  
15   **that the appeal had run, right? Didn't you**  
16   **provide that information?**

17   **A So it depends. The -- well, and it's**  
18   **frustrating to me, too, because I have to rely on**  
19   **your client to get me data and details from the**  
20   **federal government. Because while I'm responsible**  
21   **for standing in front of your client, your client**  
22   **is responsible for getting me documents.**

Transcript of Micheal Paul Donovan, Corporate Designee

19 (73 to 76)

Conducted on March 3, 2020

73

75

1 Q Okay. But Mr. --  
2 A We haven't gotten a copy of a bond  
3 cancellation since February of 2018. It is now  
4 March of 2020. You haven't sent us bond  
5 cancellations in two years.

6 Q Mr. Donovan?

7 A So I'm nervous about answering  
8 questions based on what documents we've received  
9 when you're not sending me the documents.

10 Q Aren't these appeals being handled in  
11 the name of Big Marco but by your law firm that  
12 you pay?

13 A That's correct.

14 Q Right. So you would have that  
15 information whether an appeal has run or not.

16 A So and a notice of action, yes. We  
17 would typically get it.

18 Q Right.

19 A Although sometimes they will send  
20 information to the obligor because as you well  
21 know, Ms. Katsantonis, from your read of the I352,  
22 they have the option of serving notice to

74 1 either/or.

2 Q These are appeals that are being filed  
3 by Big Marco, right?

4 A Right.

5 Q And that Nexus is providing the legal  
6 services for these appeals, right?

7 A Right.

8 Q So --

9 A Ms. Katsantonis, I think --

10 Q And paying for the appeals, correct?

11 A Okay. So is that --

12 Q Is that correct?

13 A I need to answer your question.

14 MR. SHOREMAN: There's three questions.

15 A You've asked multiple questions and I  
16 understand what you're doing, you're trying to  
17 establish a narrative but it's a false narrative.

18 Q I'm not trying to establish a  
19 narrative. I'm trying to ask you did Big Marco  
20 file those appeals.

21 A It's a deposition and I think I'm  
22 supposed to answer questions, you've got to let

1 me.

2 MR. SHOREMAN: Objection.

3 Q But you're supposed to answer the  
4 questions I ask.

5 A The way you want them.

6 Q No.

7 MR. SHOREMAN: You may not be  
8 interested, Ms. Katsantonis.

9 MS. KATSANTONIS: Go ahead.

10 MR. SHOREMAN: If you want to ask him  
11 questions, you asked him three at a time, which  
12 one do you --

13 MS. KATSANTONIS: He answered one and  
14 then I asked the next one. I said aren't these  
15 being filed in the name of Big Marco. Yes. And  
16 aren't those for Nexus --

17 MR. SHOREMAN: Let me suggest you let  
18 him finish his answer before you ask the next one.

19 A So what will happen is a bond -- let me  
20 be very -- I'm going to try to break this down to  
21 a very basic level because I want to make sure  
22 that we're all on the same page. A bond appeal is

75

1 filed, okay? And I797 fee is issued. That can be  
2 sent and counsel might get that three or four  
3 months after it's filed. It's not always

4 instantaneous. So when I tell you that we're --

5 we only know what we know based on what we're  
6 getting, we don't always get the documentation  
7 from government. The AAO is notoriously slow,  
8 okay? So we will, from time to time, and it has  
9 happened, I don't know if it's this case, but I  
10 can certainly look, but we have had situations  
11 where we have an appeal. We don't get a notice of  
12 action.

13 Q I'm not talking about a one-off case.

14 A Ms. Katsantonis, I'm talking. This  
15 happens often?

16 Q No, I know.

17 A It may very well be this case. What  
18 happens is an appeal is denied. We don't get the  
19 notice. RLI gets notice from the government of a  
20 referral to Treasury. You come to us and say, "We  
21 have this bond. It is now referred to Treasury as  
22 of this date."

Transcript of Micheal Paul Donovan, Corporate Designee

20 (77 to 80)

Conducted on March 3, 2020

77

79

1     **And I say, "No. We have an appeal on**  
2 **this bond."**

3     **And then I go and try to, you know, get**  
4 **the law firm to communicate with the AAO to find**  
5 **out if there's a negative position.**

6     Q    Okay.

7     A    And sometimes there is and we didn't  
8 get served it. So what I'm saying is I don't  
9 know, based on the facts here, whether that was  
10 this case or not but it does happen.

11    Q    Okay. But in this case you had four  
12 and a half months to pay?

13    A    I haven't looked at this case, as I  
14 said, Ms. Katsantonis, I'm happy to do it. If  
15 we're going to talk about this case I'm going to  
16 look at it and I'm going to talk about this case.

17    Q    I'm not --

18    A    I'm not going to testify as to the  
19 delay without being able to testify as to why.

20    Q    My point is, isn't it true that Nexus,  
21 and you can flip the page to the next page.

22    A    I think I'd like to review the records

1     Q    But isn't it true, Mr. Donovan --

2     A    **We paid these breaches --**

3     Q    -- that those breaches weren't --

4     A    **You're interrupting me.**

5     **We paid these breaches when they were**  
6 **referred to Treasury.**

7     Q    No. Right. But they weren't paid when  
8 RLI requested, correct?

9     A    **I would have to -- I would have to**  
10 **review the record. Do you have the --**

11    Q    Well, you know. Yeah, I have --

12    A    **We ultimately --**

13    Q    I have records that show that you did  
14 not pay them.

15    A    **We did pay them.**

16    Q    When they were requested by RLI?

17    A    **But we did pay them.**

18    Q    Not when requested by RLI, correct?

19    A    **But we did pay them when they became --**  
20 **when they were due.**

21    Q    You're not answering my question,  
22 Mr. Donovan.

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80

1     **on that client to answer your question.**

2     Q    Well, keep going because there's more.  
3 So go to the next page. There is a whole litany  
4 of, right, on page 3 there's one, two, three,  
5 four, five, six bonds which the AAO appeal was  
6 dismissed months prior to the Nexus' payment,  
7 right?

8     A    Again, I don't --

9     Q    According to the chart.

10    A    I don't know the details here.

11    Q    Right. I'm just asking you --

12    A    What I --

13    Q    Mr. Donovan --

14    A    What I do know is I'm -- as the  
15 president and CEO of Nexus Services, I'm proud of  
16 the fact that we're sitting here in a deposition  
17 and all you can ask me about are payments that  
18 were made. Because as I said before, we stand in  
19 front of RLI and this --

20    Q    That's not my question, Mr. Donovan.

21    A    -- indemnity agreement, every single  
22 time and that's what we do here.

1     A    **We paid them for --**

2     Q    Did you pay them at the time RLI  
3 requested payments?

4     A    **We paid them pursuant to --**

5                    MR. SHOREMAN: Are you talking about  
6 these three? Which ones are you talking about?  
7 Are you talking about all the bonds? Or the bonds  
8 here? Be more specific here.

9     Q    Well, let me just start -- let me just  
10 break it down. RLI has repeatedly requested that  
11 Nexus pay invoices within 30 days of the invoice,  
12 right?

13    A    I believe they have and I've explained  
14 to RLI why that's not functionally possible.

15    Q    Right. So Nexus has not complied with  
16 that request, right.

17    A    It's an inappropriate -- improper  
18 request. We have bonds that are on appeal. We're  
19 waiting.

20    Q    Okay. So improper or not, you have  
21 not --

22    A    It's part of our bad faith allegation

Transcript of Micheal Paul Donovan, Corporate Designee

21 (81 to 84)

Conducted on March 3, 2020

81

83

**1 for sure.**

2 Q Okay. So improper or not, you have not  
3 paid invoices when requested by RLI, correct?

4 **A I haven't complied with unreasonable  
5 requests from RLI.**

6 Q All right. Again, you're not -- you're  
7 throwing in -- I'm just trying to ask --

8 MR. SHOREMAN: Objection.

9 Q We've asked that the invoices be paid  
10 in 30 days, correct?

11 **A If the request is erroneous, I'm not  
12 going to do it. And I'm not going to pretend like  
13 I've done something wrong by not -- you know,  
14 destroying some program participants life because  
15 RLI wants to get off some perceived liability  
16 faster. It's absolutely insane. These are  
17 people's lives that we're talking about here.  
18 Human beings.**

19 Q So Nexus has not paid invoices by the  
20 time requested by RLI, correct?

21 MR. SHOREMAN: In what -- that's --  
22 objection.

1 **A Right. We have paid the invoices. We  
2 may not have paid them immediately upon RLI's  
3 demand, in many Instances because RLI's demand was  
4 unreasonable.**

5 Q And not within the time that RLI  
6 requested that they be paid, correct?

7 MR. SHOREMAN: Asked and answered.

8 **A I just said that. I just said that.**

9 Q So that's correct, correct?

10 MR. SHOREMAN: Object.

11 **A I don't think so. My answer is my  
12 answer.**

13 MR. SHOREMAN: I think that -- correct,  
14 correct is a double entendre.

15 Q The request is very simple. RLI  
16 requests payments be paid within 30 days. You  
17 haven't applied that, correct?

18 **A Yes. It's an improper request. I'm  
19 not going to pay and just abridge somebody's case  
20 and screw somebody's life because RLI wants us to  
21 pay an invoice --**

22 Q Right.

82

84

**1 A I --**

2 MR. SHOREMAN: Objection. Can you --  
3 are you referring to the invoices in Exhibit 2?

4 MS. KATSANTONIS: Any of the invoices.

5 Q Has Nexus paid the invoices at the time  
6 requested by RLI?

7 MR. SHOREMAN: Asked and answered.  
8 Asked and answered. Go ahead. Answer it again.

9 **A I'm sure RLI would like us to pay  
10 faster in some cases. But I can say I'm happy to  
11 say that we've paid every single time we were  
12 supposed to.**

13 Q Right. But again --

14 **A And RLI has lost no money and yet we're  
15 still in year two and a half of this abusive  
16 litigation when your client hasn't lost a dollar.  
17 Hasn't lost a dollar.**

18 Q Isn't it true, Mr. Donovan, that Nexus  
19 has not -- has consistently not paid the RLI  
20 invoices upon RLI's request that the invoices be  
21 paid?

22 MR. SHOREMAN: Asked and answered.

1 **A -- faster. That's nonsensible.**

2 Q That's all I'm looking for is you to  
3 say yes. You have not paid at RLI's request.

4 **A What I said was we've always paid  
5 invoices. We've absolutely always paid invoices.**

6 Q Right. But not when requested by RLI?  
7 MR. SHOREMAN: Asked and answered.

8 **A Because those requests are  
9 unreasonable.**

10 Q Can you just say yes rather than  
11 because?

12 **A Yes. Because the requests are  
13 unreasonable.**

14 Q Thank you.

15 **A Thank you.**

16 MR. SHOREMAN: Thank you.

17 Q And in fact, there were invoices that  
18 the court had ordered to be paid within 60 days  
19 and RLI -- and excuse me, Nexus did not pay those  
20 on time within the 60 days of an invoice, correct?

21 **A Do you have a list of the ones that  
22 you're referring to? May I see it, please.**

Transcript of Micheal Paul Donovan, Corporate Designee

22 (85 to 88)

Conducted on March 3, 2020

85

87

1 **I'll have her mark it?**

2 Q Yes, thank you.

3 (Donovan Exhibit 3 marked for  
4 identification and attached to the transcript.)

5 Q So this list is a list of invoices that  
6 had not been paid by Nexus as of the January 22nd,  
7 2020 hearing before Judge Urbanski?

8 A **Are any of these still outstanding?**

9 Q That's not my question.

10 A **No. I'm asking you.**

11 Q My question -- I'm not going to answer  
12 questions. I'm not being deposed.

13 A **Because they're not, okay?**

14 Q My question is do you have an  
15 understanding that the invoices listed on this  
16 summary page were not paid as of the January 22nd,  
17 '20 hearing?

18 A **My understanding is that these invoices  
19 have been paid.**

20 Q No?

21 A **I'm not -- I'm not done,**

22 Ms. Katsantonis, please.

1 **document in front of the court that's improper.**

2 **What dates the payments were made, I don't know.**

3 Q Right. But you have no evidence or no

4 reason to dispute the facts set forth in this

5 summary of Nexus' contempt by failure to pay past  
6 due invoices?

7 A **Only insofar as the document seems to**  
8 **leave unclear whether the balances have been paid**  
9 **and I think that's an important issue.**

10 Q You mean as of today?

11 A **Correct.**

12 Q But we're using this as of  
13 January 22nd, 2020.

14 A **But my biggest concern is that I comply**  
15 **with the provisions of the general indemnity**  
16 **agreement. So if I am not compliant -- if any of**  
17 **these are outstanding, you need to let me know so**  
18 **I can pay your client and comply with the general**  
19 **indemnity agreement.**

20 Q I'm asking you, though, to the best of  
21 your knowledge, you have no reason to dispute that  
22 these invoices had not been paid as of

88

1 Q Sorry.

2 A **I'm not aware of whether they were paid**  
3 **before the hearing or not, but I am under the**  
4 **impression and knowledge that these are paid and**  
5 **if they aren't you need to let me know that so I**  
6 **can pay them.**

7 Q So you received a copy of this chart  
8 after the hearing.

9 A **I'm sure I did, yeah.**

10 Q All right. And did you review it with  
11 your records to ensure it was accurate?

12 A **Yeah. Although admittedly I review a**  
13 **lot of records.**

14 Q Okay. And so you have no reason to  
15 dispute that these invoices have not been paid as  
16 of the January 22nd, 2020 hearing, correct?

17 A **Well, so, you know my prior**  
18 **qualification would certainly apply although I**  
19 **don't know that that's what this spreadsheet**  
20 **represents to the court. So -- but I'm not sure**  
21 **of the payment date but I don't know. I'm sure**  
22 **you're not lying to me. I'm sure you didn't put a**

1 January 22nd, 2020?

2 A **To the best of my knowledge, this**  
3 **spreadsheet is accurate as it's dated as of –**  
4 **dated as of January 21st, 2020, and to the best of**  
5 **my knowledge all of these invoices have been paid.**

6 Q Since?

7 (Donovan Exhibit 4 marked for  
8 identification and attached to the transcript.)

9 A **I like the color coding. I wonder what**  
10 **burnt orange means? I'm trying to figure out your**  
11 **color coding.**

12 Q There is no reason. Trying to  
13 distinguish them out so we don't get them  
14 confused.

15 I handed you another chart that was  
16 presented to the court, it was marked Plaintiff's  
17 Exhibit 3, and it's the summary of RLI bond  
18 demands and Nexus responses.

19 Do you see that?

20 A **I do see that.**

21 MR. SHOREMAN: What exhibit is that to  
22 the deposition?

Transcript of Micheal Paul Donovan, Corporate Designee

23 (89 to 92)

Conducted on March 3, 2020

89

91

1 THE WITNESS: Exhibit 4.

2 MR. SHOREMAN: This is 4?

3 THE WITNESS: Yes, sir.

4 Q And this is another chart that was  
5 presented at the January 22nd, 2020 hearing.  
6 And -- right. And as you sit here today, do you  
7 have any reason to dispute the facts set forth in  
8 this chart that was presented to the court?

9 MR. SHOREMAN: Ms. Katsantonis, could  
10 you explain what this chart is? I know it's  
11 presented to the court but I don't believe this  
12 witness has an explanation of what the chart  
13 actually relates to.

14 Q Did you review this chart after the  
15 hearing, Mr. Donovan?

16 A I think I've seen it. I'm not -- it  
17 looks like -- so what we're talking about each  
18 line is grouping multiple invoices together and  
19 giving a narrative about what happened with those  
20 groups of invoices, right.

21 Q Well, it's -- right. It's basically  
22 saying here's when RLI issued a demand letter

90 1 pursuant to the court order?

2 A Right.

3 Q And then there's a payment deadline  
4 pursuant to the court order.

5 A So, yeah, I can -- so based on my  
6 ability to read the spreadsheet, I can understand  
7 what it's saying.

8 Q Right.

9 A I don't have independent knowledge of  
10 the spreadsheet, but I'm happy to answer questions  
11 about it.

12 Q Right. But you had an opportunity  
13 to -- Nexus had an opportunity to review this  
14 information and you have no reason --

15 A Correct. It was filed in court so we  
16 would have received a copy of it. I would have  
17 reviewed it. I didn't flag it as something that,  
18 you know...

19 Q Right. And Nexus has no reason to  
20 dispute the facts set forth in this chart; is that  
21 correct?

22 A That's correct. And I believe we've

1 paid all of these invoices.

2 If I haven't let me know so I can make  
3 good on the indemnity agreement.

4 Q So RLI contends that as of March 1st,  
5 2020, DHS has issued formal notices of  
6 cancellation on 399 of RLI's 2,486 bonds.  
7 Do you dispute that figure?

8 A Let me -- can you give me a second?

9 Q Sure.

10 A Thanks. I don't have any reason to  
11 dispute that.

12 Q Okay.

13 A I would just say that I rely on your  
14 client to send cancellations and since they  
15 stopped sending them in February of 2018, there's  
16 no way for me to know what cancellations we've  
17 received since. And so I am a hundred percent  
18 flying blind and relying on your client's  
19 representations.

20 Although I would very much like to  
21 continue to receive bond cancellations, so perhaps  
22 you could pass that on because they are very

92

1 helpful in understanding, you know, being able to  
2 communicate to clients that, you know,  
3 congratulations on success of their case. We  
4 don't get those. We don't know.

5 Q So let me ask you, and you stated that  
6 Nexus is not keeping track of how many notice of  
7 cancellation. You're relying on RLI's number,  
8 right?

9 A Well, we don't get them. There's no  
10 way for us to keep track. All we can do is rely  
11 on you. When your client doesn't send us the  
12 cancellations, we're out of luck.

13 Q Okay.

14 A There's no other way for us to get  
15 them.

16 Q And if RLI contends that the aggregate  
17 penal sum of the 399 bonds for which a notice of  
18 cancellation was received is 5,219,000, you do not  
19 dispute that figure either, correct?

20 A It sounds about right based on average  
21 bond amount. But, you know, wouldn't know, but  
22 wouldn't necessarily think it's a lie either.

Transcript of Micheal Paul Donovan, Corporate Designee

24 (93 to 96)

Conducted on March 3, 2020

93

1 Q Okay.

2 A But wouldn't know because I don't have  
3 the documents.

4 Q So if we used your number that -- of  
5 the bonds that we know the disposition of for RLI,  
6 that RLI issued, 290 have been paid, right, using  
7 your numbers?

8 A Right.

9 Q And 399 have been canceled?

10 A Right.

11 Q Right.

12 A Using those numbers, right?

13 Q And the remainder we don't know the  
14 disposition yet.

15 A Right.

16 Q Okay. So if you -- the ones that we  
17 know the disposition of, am I right, if you added  
18 the 290 plus the 399 -- 290 plus the 399, that's  
19 689 out of the 2,486 RLI bonds that we currently  
20 know the disposition of based on Nexus' number,  
21 correct?

22 A Based on Nexus' number of paid.

95  
1 number of bonds that are written, not by the  
2 number of bonds that are canceled. And it's  
3 especially true given the fact that I don't even  
4 get cancellations from your client.

5 Q Well, you're --

6 MR. SHOREMAN: Wait, objection.

7 MS. KATSANTONIS: Sorry. You're right.

8 A It's impossible for me to address that.  
9 I don't know that bucket of information and have  
10 no knowledge of that number. And B, it doesn't  
11 matter. The two numbers don't relate to each  
12 other at all.

13 Q Well --

14 A It matters if you're calculating the  
15 total number of closed cases.

16 Q Right.

17 A And certainly you could calculate that.  
18 But that has nothing to do with the  
19 failure or success rate of a program.

20 Q Okay. So you're taking -- so let's go  
21 to the failure rate for a minute --

22 A Uh-huh.

96  
1 Q -- your failure rate of a program.

2 What is Nexus' failure rate of its  
3 program?

4 A Our failure rate's 2.38 percent.

5 Q Okay. And how is that number  
6 calculated?

7 A That's calculated by determining the  
8 total liability of bonds that Nexus has secured  
9 and the total invoices paid based on that  
10 liability.

11 Q Okay. So you're saying, for what, for  
12 all of the bond programs since 2015.

13 A Correct.

14 Q So you're using your -- I don't  
15 remember the number, 23,000 number.

16 A Yeah, right, but it's dollar amount.

17 Dollar amount. If you're calculating the breach,  
18 the fail rate, it really has to be dollar amount  
19 because number of bonds, depending on the amount  
20 of the bonds. In other words --

21 Q Aren't these people? Why are you  
22 counting the dollar amount?

Transcript of Micheal Paul Donovan, Corporate Designee

25 (97 to 100)

Conducted on March 3, 2020

97

99

1 A Because that's what ultimately you have  
2 to pay. If you're calculating a fail rate based  
3 on dollars and cents, then you would calculate it  
4 that way, right? The fail rate is based on the  
5 amount of money that Nexus has to pay for RLI for  
6 bonds that breach, right?

7 Q Okay. So --

8 A Why wouldn't you think about dollars?  
9 This whole case is about dollars. If you want to  
10 make -- if you want to stop talking about dollars  
11 and start talking about people, you're going to  
12 have a best friend right here. Because I'm a  
13 hundred percent about that. This case is about  
14 money and it's about money that we are paying.  
15 The shocking reality of this case,

16 Ms. Katsantonis --

17 Q I don't need --

18 A -- is that we have stood and done  
19 everything that we were supposed to do pursuant to  
20 this general indemnity agreement --

21 Q All right.

22 A -- for the last three years. And we're

98

100

1 in this abusive litigation. We're talking about  
2 dollars and then you ask me are these people not  
3 dollars? Are you kidding me?

4 Q Okay.

5 A You just put several spreadsheets in  
6 front of me that are all about dollars.

7 Q I'm just trying to understand how  
8 you're calculating.

9 A And I'm telling you.

10 Q So let's just go back to that, okay?

11 A Uh-huh.

12 Q Let me just understand how you're  
13 calculating your fail rate. I just want to know  
14 how you're doing it. So you're saying that there  
15 was 23 -- you took the 23,234 bonds issued and you  
16 took the total value of those bonds?

17 A That's correct.

18 Q And what is the total value of those  
19 bonds?

20 A \$481,928,000.

21 Q Okay. So you took the total value of  
22 those bonds and then you have deducted how much

1 Nexus has paid in bond breaches?

2 A Right. The total that we considered  
3 was 11,477,712. The documentation for which is in  
4 the bond breach notebooks that I'm producing  
5 today.

6 Q Are there payments that you didn't  
7 consider in that number?

8 A No. This is representative of Nexus'  
9 payments of invoice bonds.

10 Q All right. And so you're --

11 A So these are true dollars.

12 Q Okay. So if using your fail rate  
13 analogy, how many RLI -- what -- you agree that  
14 the penal sum of the RLI bonds was 30 million?

15 A That's correct.

16 Q And how many have been paid?

17 A \$3,212,883.67.

18 Q So then under your calculation of a  
19 fail rate, RLI has had at least a 10 percent or  
20 more fail rate, correct?

21 A Which is -- now you'll understand why I  
22 have a bad faith claim and I've been screaming for

1 your client to allow me --

2 Q Can you just answer my question?

3 A Yes. But your client has refused to  
4 allows us to contest these breaches. Your client  
5 has created the crisis that they're now screaming  
6 about. And, oh, by the way, I've stood in front  
7 of them, even though they created the crisis and I  
8 paid the breaches that they caused by not --

9 Q What crisis has --

10 A -- by not allowing -- not allowing us  
11 to contest these breaches. If we had --

12 Q Isn't Big Marco contesting the  
13 breaches?

14 A No, he's appealing. Ms. Katsantonis,  
15 the surety has to sign a letter for allowing you  
16 to contest the breach with the bond unit.

17 Otherwise, the only thing the co-obligor can do is  
18 file an appeal with the AAO, which is much longer  
19 and much less likely to be successful.

20 Q How would you -- what do you -- what --  
21 give me an example of contesting a breach.

22 A In fact, I'm making a production of a

Transcript of Micheal Paul Donovan, Corporate Designee

26 (101 to 104)

Conducted on March 3, 2020

	101		103
1 request to Ira Sussman. We made a request for 47		1 Q Let's see the letter.	
2 different bonds that we felt we could contest		2 A I may have to pull it up	
3 because there were issues. And so Julie –		3 electronically.	
4 Q You're making that different than an		4 MR. SHOREMAN: Do whatever you have to	
5 appeal?		5 do.	
6 A You're –		6 THE WITNESS: Okay.	
7 Q No, I'm just trying to understand.		7 Q All right. Let's -- Mr. Donovan, are	
8 A No, yeah, it is different.		8 you looking for the letter; is that what you're	
9 Q I'm trying to understand what your		9 doing?	
10 difference -- your distinction is.		10 A December 19th, 2017. And I will -- it	
11 A Yes. See, here's how it works: You		11 was a letter that Juliana Gutierrez sent to	
12 know, a notice to deliver a bond, you know,		12 Mr. Sussman, that I will –	
13 there's a notice to deliver, the person didn't get		13 MR. SHOREMAN: Can you email it to me	
14 the notice. The bond breaches. Maybe we don't		14 and I'll provide it.	
15 even have the breach yet, right?		15 MS. KATSANTONIS: We might have that.	
16 But we know the bond breached. We know		16 A You probably do.	
17 there's an issue. Maybe the person got		17 Q But we'll come back to it. I think	
18 transferred from one jail to the other and the		18 it's in one of those boxes.	
19 judge – this happens, it happens in Texas,		19 THE WITNESS: Anyway, John, I'm sending	
20 there's an error, the person got sent home and		20 it over to you just to have it.	
21 didn't – wasn't able to go to the court that they		21 MR. SHOREMAN: Thank you.	
22 were supposed to so they went to the wrong court.		22 THE WITNESS: Otherwise I'll forget.	
	102		104
1 That kind of stuff happens.		1 I'll never remember to do it.	
2 And in those situations, when you can		2 Q All right. So getting back to this	
3 prove it, you can put that in front of the bond		3 breach rate. So you're -- in order to determine	
4 unit officer and they cancel the breach. But in		4 the breach rate, you're -- when you use the total	
5 order to do that, I have to have a letter from the		5 amount of bonds issued for a balance calculation,	
6 surety, because the bond unit officer doesn't care		6 you're just assuming that they're not breached?	
7 about the co-obligator, they want the surety to		7 They'll never be breached, right?	
8 give us permission to contest. And we asked for		8 A No, they're not breached.	
9 permission to contest from RLI, and RLI said –		9 Q Well, aren't you -- don't you have to	
10 first of all, you refused it entirely. And then		10 take into consideration the fact that some of them	
11 when we sent this letter and said, look, this is a		11 will be breached?	
12 lot of money. Our breach rate with RLI is higher.		12 A Well –	
13 We're concerned about it. We want to be able to		13 Q In the future?	
14 contest these breaches and –		14 A You know, I think that's why you	
15 Q Did you say that --		15 calculate a fail rate so you understand what that	
16 A – Mr. Sussman said no every single		16 fail rate likely is. I mean, I want to understand	
17 time. He never let us contest one.		17 what my fail rate is.	
18 Q What's the date of that letter?		18 Q But --	
19 A I will have to get it for you. But I		19 A So I understand what my fail rate is	
20 can produce it.		20 likely to be. Is that what you're asking me?	
21 MR. SHOREMAN: Pull it out. You want		21 Q Yeah, but that doesn't make any sense.	
22 to get it? Get it.		22 So when you're calculating your fail rate -- I'm	

Transcript of Micheal Paul Donovan, Corporate Designee

27 (105 to 108)

Conducted on March 3, 2020

105

107

1 just trying to understand the math.

2 **A Right.**

3 Q When you're calculating the rate,  
4 you're using as the denominator all of the  
5 outstanding, the penal sum of all of the  
6 outstanding bonds, right?

7 **A Of course. I mean that's how you  
8 determine a fail rate.**

9 Q Well, that's how you're calculating it.  
10 But you know that some of those bonds are going to  
11 be breached and paid?

12 **A And I know the vast majority will never  
13 be breached.**

14 Q How do you know that when you don't --  
15 you don't know the disposition of those -- you  
16 don't know the disposition of those bonds yet.

17 **A Well, no, of course not. But  
18 historical data. I mean, not everybody -- if  
19 everyone breached you would never have gotten into  
20 this program, right? I mean, you guys know that  
21 every bond doesn't breach. And you guys know  
22 that --**

1 So my question to you is RLI when  
2 issuing its bonds relied on the fact that Nexus  
3 said that it had a fail rate of under 2 percent,  
4 right?

5 MR. SHOREMAN: Objection. Objection.  
6 That's -- you're asking this man to speculate as  
7 to what RLI believed.

8 MS. KATSANTONIS: No, I'm asking him as  
9 to his understanding of the representation made by  
10 Nexus to RLI.

11 MR. SHOREMAN: No, you're not. That's  
12 not the question.

13 Q Didn't Nexus advise --

14 MR. SHOREMAN: That's not the question.  
15 Q Didn't Nexus advise RLI that it had a  
16 bond failure rate of less than 2 percent?

17 A I think that's a legitimate question.

18 And the answer to that legitimate question is yes.

19 But for you to say I don't know what Mr. Sandoz or  
20 Mr. Sussman or anybody else relied on more than  
21 anything else and so I can't answer that. But I  
22 certainly can tell you that yes we communicated

106

108

1 Q Mr. Donovan?

2 A -- the vast majority of bonds don't  
3 breach.

4 Q Mr. Donovan, what is the national --  
5 right. RLI was relying on your representation of  
6 an under-2 percent bond breach failure rate,  
7 right, when it issued the bonds?

8 MR. SHOREMAN: Objection. That assumes  
9 a fact not in evidence.

10 A I think RLI responded to our fail rate  
11 which is favorable and as a company is good. With  
12 the RLI business it's not because RLI has acted in  
13 bad faith. RLI has refused to allow us to contest  
14 bond breaches. RLI has continued to act in a way  
15 that has only exacerbated the breach --

16 Q That's not my question.

17 A We continued to pay them of course  
18 because we do that.

19 Q Mr. Donovan, you don't need to give me  
20 a whole recitation of your position with every  
21 question. I'm trying to ask simple questions so  
22 we can just keep moving it along.

1 our fail rate to them.

2 Q When you're doing you --

3 A And it's unfortunate that the fail rate  
4 for RLI is so high.

5 Q Right. But just from a mathematical  
6 concept, when you're doing your fail rate the  
7 denominator is the full value of all the bonds  
8 that have ever been issued, right?

9 A That's correct.

10 Q And you're using that large denominator  
11 to come up with your 2 percent figure based on how  
12 many bonds have been paid?

13 A Well, math is math, Vivian.

14 Q Right?

15 A A percentage of something is a  
16 percentage of something. I don't understand this  
17 question. I'm not going to redefine math.

18 Q Let me ask you this though, the  
19 denominator includes bonds that you know that  
20 you'll have to pay. In that denominator number  
21 there are bonds that will be breached and invoices  
22 paid, right?

Transcript of Micheal Paul Donovan, Corporate Designee

28 (109 to 112)

Conducted on March 3, 2020

109

1 A Well, sure. That's why you calculate a  
2 fail rate, right, so you can anticipate what your  
3 fail rate is going to be. Isn't that why you want  
4 to know?

5 Q Well, that's not an accurate fail rate,  
6 is it?

7 A You want to know because you want to  
8 put it in your motion for summary judgment that we  
9 have a high fail. But the only place we have a  
10 high fail rate is RLI bonds because your client  
11 doesn't allow us to contest, your client stands  
12 in the way of our ability to adjudicate these  
13 favorably and we have to pay more.

14 Q Doesn't --

15 A But that's what we're talking about.

16 Q What's your fail rate for all your  
17 other sureties?

18 A It's -- as I said, the fail rate is  
19 2.38 percent.

20 Q So that applies for each and every  
21 other surety?

22 A That's everybody.

111

1 say that would be that RLI's breach rate is much,  
2 much higher than our global breach rate. That's  
3 probably a better way to say it.

4 Q Again, looking at your -- how you  
5 calculate a failure rate, wouldn't you agree that  
6 that's erroneous because some of the bonds that  
7 you include in the denominator will be breached?

8 MR. SHOREMAN: Objection. That's not  
9 an appropriate question to a corporate  
10 representative.

11 A I know.

12 MR. SHOREMAN: Are you asking for his  
13 personnel opinion?

14 MS. KATSANTONIS: I'm asking -- he's  
15 giving me what Nexus' failure rate is.

16 MR. SHOREMAN: Yeah. You're telling  
17 him -- he's given you his corporate policy and  
18 you're saying isn't that corporate policy wrong.  
19 He's not responsible for defending that corporate  
20 policy; he's responsible for telling you what it  
21 is.

22 MS. KATSANTONIS: That's fine. He can

110

1 Q No, but I'm asking you, what is your  
2 fail rate for other sureties? Let's say FCS?

3 A I don't know. We don't keep that -- we  
4 don't keep that data specific to each surety. The  
5 only reason we have it for FSC is because you  
6 provided it -- RLI is because you provided it.

7 Q Right. So when you say RLI's fail rate  
8 is higher than the other sureties, you don't know  
9 if that's true?

10 A You know what, Ms. Katsantonis, you're  
11 exactly right. I will be able to say with  
12 absolute assurance that RLI's fail rate is higher,  
13 much, much, much higher, more than three times as  
14 high as our global fail rate. But you're quite  
15 right. I can't say that RLI has a higher fail  
16 rates than the others because I don't have those  
17 calculations. I can say that it is obviously if  
18 RLI's calculation is, you know, three times as  
19 much that the other sureties would be much lower.  
20 And it's obviously based on the calculations in  
21 total that it's much lower. But I think you're  
22 right, what I can say and the appropriate way to

112

1 explain to me --

2 MR. SHOREMAN: Go ahead.

3 MS. KATSANTONIS: If you're going to  
4 instruct him not to answer how he calculates.

5 MR. SHOREMAN: No. But I want --  
6 you're asking him a question that can only go to  
7 this witness's personal knowledge.

8 MS. KATSANTONIS: No. It's his --  
9 Nexus' calculation -- and it doesn't matter, I  
10 don't care if it's personal or not. He's the  
11 president of the company. It doesn't matter. It  
12 binds the company to the same degree.

13 MR. SHOREMAN: No, that's not -- that's  
14 incorrect, Ms. Katsantonis.

15 MS. KATSANTONIS: I'm not going to  
16 argue with you.

17 MR. SHOREMAN: The issue here is what  
18 is the policy of the company not to ask the  
19 corporate representative isn't that policy that  
20 you just enunciated therefore wrong.

21 MR. HARRIS: Let's off the record to  
22 have this discussion.

Transcript of Micheal Paul Donovan, Corporate Designee

29 (113 to 116)

Conducted on March 3, 2020

113

115

1 BY MS. KATSANTONIS:

2 Q Right. So in calculating the bond  
 3 breach ratio, isn't it true that the denominator  
 4 figure is inaccurate because some of those bonds  
 5 will be breached and invoiced? They'll be moved  
 6 to the numerator at some point, right?

7 MR. SHOREMAN: Okay. I object.  
 8 Go ahead and answer.

9 A Okay. So I don't really understand  
 10 your question and I'll say that I don't understand  
 11 it not because I need you to repeat it, but  
 12 because I think we're completely talking about two  
 13 different things.

14 When I calculate a fail rate, I'm using  
 15 real numbers. I'm using them in a very  
 16 straightforward way and I'm calculating it the way  
 17 everybody else calculates those numbers. When you  
 18 have -- when you have two numbers and you're  
 19 trying to determine the percentage of one number  
 20 versus the other. There's a very basic  
 21 straightforward mathematical calculation, we all  
 22 learned it in fourth grade, that enables you to

114

1 get that figure. That's what I've done. You are  
 2 asserting that there's got to be some other  
 3 additional calculation. No, no. There is a total  
 4 universe of bonds and there is a breach rate of  
 5 those bonds. You would have to consider those two  
 6 numbers together to get that in any -- any other  
 7 way that you would calculate it would be  
 8 erroneous.

9 Q Really? Because if you issued all the  
 10 bonds on the same day, let's just say you  
 11 calculated RLI's failure rate, if you calculated  
 12 RLI's based on the way you're calculating it, if  
 13 you calculated RLI's failure rate within the first  
 14 three months of issuing a bond, it would be zero  
 15 percent, right?

16 A But that's not what we're doing.

17 Q But isn't that true?

18 A Hold on a second?

19 Q Isn't it true? Based on your  
 20 calculations isn't that true?

21 A Can you stop interrupting?

22 Q I want the answer to the question.

1 A But you want your answer to a question  
 2 which is wrong. I mean if you want to testify you  
 3 can give whatever answer you want.

4 Q Is it wrong that after three months  
 5 your failure rate with RLI would have been zero  
 6 percent?

7 A I'm not testifying about my failure  
 8 rate with RLI after three months. I'm testifying  
 9 based on a year of business, where it's --

10 Q Well, it could be --

11 A -- seven percent, where it's three  
 12 times the other books of business.

13 Q Right, but based on your calculations,  
 14 based on if you take the total number of bonds  
 15 paid versus all the bonds out there, from three  
 16 months into the program, RLI's bond breach failure  
 17 rate would have been zero percent, correct?

18 A Well, sure.

19 Q Okay.

20 A But since you have six years' worth of  
 21 numbers, aren't you kind of proving my point?

22 Q And --

116

1 A Aren't you basically justifying further  
 2 my argument that these numbers matter more because  
 3 there's more of them? Thank you, Ms. Katsantonis.

4 Q And if you have six years of numbers on  
 5 the disposition of those bonds, how many have been  
 6 canceled versus paid, isn't that accurate data to  
 7 use?

8 A No. The cancellation has nothing to do  
 9 with the breach rate.

10 Q It has to do with the rate at which the  
 11 liability of a surety is terminated, right?

12 A Yeah. So the -- any potential future  
 13 liability would not be there if the bond is  
 14 canceled. But that's not -- we're talking about a  
 15 fail rate, Ms. Katsantonis. We're talking about a  
 16 fail rate based on breaches. You are making this  
 17 very, very simple issue much more complicated. At  
 18 the end of the day, you filed a lawsuit against me  
 19 because you want money. You want money based on  
 20 what you think are potential losses, not real  
 21 losses because you had no losses. So this is a  
 22 lawsuit about money. And now I'm talking to

Transcript of Micheal Paul Donovan, Corporate Designee

30 (117 to 120)

Conducted on March 3, 2020

117

119

1 **you --**

2 Q I know you keep saying that for the  
3 record, but I hope you understand what exoneration  
4 is.

5 **A Ms. Katsantonis, I'm trying to answer.**

6 MR. SHOREMAN: Please don't interrupt  
7 the witness.

8 **A I'm trying to answer.**

9 MS. KATSANTONIS: He's not answering.  
10 He just keeps giving his own lecture.

11 MR. SHOREMAN: Are you just going to  
12 cut off his answer then?

13 Q Go ahead.

14 **A This is based on money. It's based on  
15 money paid.**

16 Q Then you don't understand the whole  
17 lawsuit.

18 MR. SHOREMAN: Please. You're arguing.

19 **A I read the Complaint. And I'd really  
20 like to finish my answer, please.**

21 Q I don't --

22 **A You're not interested, but guess what,**

118

120

1 **the record is. I'm going to finish my answer for  
2 the record.**

3 Q You can answer --

4 **A Ms. Katsantonis, please.**

5 Q I'm going to let you finish this answer  
6 but in the future I'm going to try to direct you  
7 to please just answer my questions. You're going  
8 to have your day in court and you can go --

9 **A Yes, I am.**

10 Q -- and talk about everything you would  
11 like to talk about in your position and that's  
12 great. But today we're here for me to get answers  
13 with regard to our deposition.

14 **A But you ask a question.**

15 MR. SHOREMAN: Object. Surely,  
16 Ms. Katsantonis, you must agree that you want this  
17 witness to give full and complete responses,  
18 correct?

19 MS. KATSANTONIS: Let's finish. I  
20 would like him to --

21 MR. HARRIS: More responsive answers.

22 MR. SHOREMAN: Let's get it.

1 MS. KATSANTONIS: I don't want to waste  
2 any more time on the record. Let's get off the  
3 record.

4 MR. SHOREMAN: No, we're not going off  
5 the record.

6 MS. KATSANTONIS: All right. Well,  
7 then I don't want this time on my record.

8 MR. SHOREMAN: Then don't ask him  
9 open-ended questions.

10 Go ahead. Finish your question --  
11 finish your answer.

12 **A This is a lawsuit about money. So when  
13 you're asking questions about breach rate and fail  
14 rate, why wouldn't I presume you want to know  
15 about the money. So the only way to calculate the  
16 breach rate is to take the total dollars of the  
17 liability and the total dollars of what has been  
18 paid and that's your rate and the rate is  
19 2.38 percent and the fact that it's three times  
20 that for RLI is a symptom of the bad faith.**

21 Q Do you know what bad faith is?

22 **A Oh, yes. I've gotten the crash course**

1 **of it in the last couple years.**

2 Q Okay. And what's your definition of  
3 bad faith?

4 **A When RLI engages in an agreement and  
5 then does things that cause higher failure rates,  
6 for example, that's bad faith. So for example,  
7 when RLI arbitrarily and capriciously denies our  
8 ability to contest breaches, you know, knowing  
9 that that's going to elevate the breach rate,  
10 that's bad faith.**

11 Q What facts and --

12 **A When RLI doesn't send us cancellations  
13 for two years, that's bad faith. When RLI sends  
14 us a bill and makes us pay an invoice they know is  
15 canceled, that's bad faith. These are elements of  
16 bad faith. And I'm going to need a bio break.**

17 MR. SHOREMAN: Okay. Is this lunch or  
18 is this a break?

19 THE VIDEOGRAPHER: We are going off the  
20 record at 13:21.

21 (Recess taken.)

22 THE VIDEOGRAPHER: We are back on the

Transcript of Micheal Paul Donovan, Corporate Designee

31 (121 to 124)

Conducted on March 3, 2020

1 record at 14:14.

2 BY MS. KATSANTONIS:

3 Q Mr. Donovan, before we took a break,  
4 you were listing a series of issues that you  
5 decided -- where you determined to be bad faith?

6 A Yes. My answer, yes, ma'am.

7 Q So just to be clear, what was the first  
8 one, arbitrarily and capriciously?

9 A Well, to ask me to remember the order  
10 which I listed them I may fail.

11 Q I'm sorry.

12 A But what I said was arbitrarily and  
13 capriciously deny our ability to contest bond  
14 breaches we know are inaccurate. Which I think  
15 shows in the fail rate very clearly.

16 We're paying bonds that we wouldn't  
17 have to pay, that we shouldn't have to pay. We  
18 have RLI bonded principals who are still going to  
19 court on breaches we've paid.

20 Q Okay.

21 A Because they were reopened, but we  
22 couldn't contest it so we couldn't get the breach

122 1 set aside so we had to pay it.

2 Q Which bonds principals do you have  
3 still going to court?

4 A I'll get you a list of the bond  
5 principals that we have. I think there are four  
6 or five of them.

7 Q You don't know sitting here today?

8 A There's a gentleman named [REDACTED]

9 [REDACTED] I'll have to get you his full  
10 name, but I've been looking at his case  
11 specifically and talking to him. He has a breach.  
12 That breach invoiced and he still has immigration  
13 court. There was an error in his case, this  
14 sometimes happens, and I think that had we had an  
15 opportunity to contest his breach we would have  
16 done that. If it were a non-RLI breach, we would  
17 have contested it with the bond officer and  
18 hopefully had it mitigated.

19 Q Isn't -- in any situation, even if a  
20 bond penal sum is paid, can't the DHS continue in  
21 its efforts to identify the immigrant and continue  
22 with removal proceedings or any other proceedings?

121 1 A So what you're asking is if -- can you  
2 help me understand what your question is?

3 Are you saying a person who doesn't --  
4 who breaches and whose bond is paid still has  
5 responsibilities? Is that what you're asking me?

6 Q Right?

7 A I just want to understand.

8 Q Right.

9 A Yes.

10 Q A person doesn't appear, then there's a  
11 notice to deliver to the bonding company. And the  
12 immigrant doesn't show up, eventually the bonding  
13 company pays the penalty, penal sum of the bond.  
14 But isn't -- aren't those proceedings ongoing  
15 still?

16 A So --

17 Q Doesn't DHS continue?

18 A Typically a warrant would be issued for  
19 the person's arrest at which time they would be  
20 brought back into custody and then a new case  
21 would be initiated against them.

22 Q So they could still have proceedings?

124 1 A They could still have proceedings. And  
2 what they would no longer have, though, is an  
3 active bond. So if they're at liberty in the  
4 proceedings and then the bond is abridged, then  
5 they're no longer on bond and that's what can  
6 affect them. It makes them susceptible to  
7 immediate arrest.

8 Q Okay. So if a bond breach invoice is  
9 mitigated, the result is just that the amount of  
10 the payment obligation is reduced, right?

11 A Correct.

12 Q So -- right. So it has no impact on  
13 the individual's substantive rights in immigration  
14 court, right?

15 A It depends. If it's mitigated, meaning  
16 you get a 33 or 66 percent reduction, then, no,  
17 there's nothing to do with the individual's case  
18 and everything to do with the obligor, co-obligor  
19 showing that they substantially complied, meaning  
20 that the immigrant substantially complied with  
21 their duties.

22 Now, that being said, if it's a -- but

Transcript of Micheal Paul Donovan, Corporate Designee

32 (125 to 128)

Conducted on March 3, 2020

125

127

1 if it's a situation where the breach was improper  
 2 and they're rescinding the breach, then it  
 3 absolutely affects the client. And the vast  
 4 majority of cases where we challenge a breach  
 5 because, you know, with a surety letter, with an  
 6 authorization letter from a surety, it isn't to  
 7 get a mitigation, it isn't to get 33 percent or  
 8 66 percent, it's because the person actually has  
 9 an active case, there's a real issue and the bond  
 10 was breached inappropriately and we're asking the  
 11 bond unit officer to fix it. It's the most direct  
 12 way to seek a resolution as we explained to  
 13 Mr. Sussman when we asked permission to do it.

14 He denied our blanket permission but  
 15 then told us we could ask for permission for  
 16 individual bonds. We asked for permission for  
 17 dozens, were denied each and every time. So we've  
 18 not been able to actually contest breaches that  
 19 are RLI breaches.

20 Q So what argument would you make for  
 21 Hector that would affect his substantive rights in  
 22 immigration court?

1 Q No. What do you mean it's not  
 2 resolved? You keep -- I mean, you're kind of  
 3 mixing terms. I'm just trying to understand.

4 A Let me be very clear.

5 Q If a bond is paid, how does that bond  
 6 payment affect the rights of the immigrant to  
 7 pursue its rights in immigration court?

8 A We are talking about a very specific  
 9 subset of bonds. What we're talking about are  
 10 reconsideration requests. That's what we're  
 11 talking about. So you're asking a question on top  
 12 of that conversation. So let's get apples to  
 13 apples, okay? We're talking about –

14 Q Reconsideration of what decision?

15 A Of the breach?

16 Q Of the bond breach or the notice to  
 17 appear?

18 A Of the bond breach. Which is what we  
 19 require surety authorization to submit, okay? So  
 20 what we're talking about, which doesn't happen in  
 21 the universe of RLI bonds because your client  
 22 doesn't permit it. But what would typically

126

128

1 MR. WILLIAMS: When you say substantive  
 2 rights, are you talking about status?

3 MS. KATSANTONIS: I'm asking him based  
 4 on what Mr. Donovan's testimony is.

5 A So I can recognize a legal issue but  
 6 I'm not a lawyer. So I can't advise [REDACTED] of his  
 7 rights and I can't advise you of [REDACTED] rights.

8 Q Well, but you just said that somehow,  
 9 or I think you're implying that those rights are  
 10 somehow affected if a bond is paid?

11 A They can be.

12 Q How specifically?

13 MR. WILLIAMS: Status rights or what  
 14 are you --

15 MS. KATSANTONIS: This is his testimony  
 16 I'm asking him. I don't understand it either but  
 17 I'm trying to figure out how are the immigrants'  
 18 rights affected if a bond is paid.

19 A Because if a bond is – if a bond is  
 20 breached and it's paid and it's not resolved, then  
 21 there's a warrant issued for that alien's arrest.  
 22 Do you understand?

1 happen.

2 Q That's -- okay?

3 A That's true. What typically happens in  
 4 a case like that is an individual will be  
 5 breached. I'll give you an example, by way of  
 6 example, individuals of [REDACTED], the  
 7 judge calls the person up, sets a bond, holds them  
 8 over for a two-week detained calendar docket. In  
 9 the middle of those two weeks, they post bond,  
 10 they go home. They travel to New York where they  
 11 live. In two weeks the judge calls their case,  
 12 they're not there. What sometimes happens, and  
 13 it's a tragedy of justice for sure but it's  
 14 happened in hundreds of cases, is the judge will  
 15 order them removed because they're not there. And  
 16 that immediately triggers an I-340, immediately,  
 17 almost, because the bond had just recently been  
 18 posted. And in those situations when you can show  
 19 that the person couldn't have gone to court, you  
 20 can go to the bond unit officer, who wants to do  
 21 the right thing.

22 Q Okay.

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Transcript of Micheal Paul Donovan, Corporate Designee

34 (133 to 136)

Conducted on March 3, 2020

133

135

1 **obligors and says to the obligors, hey, cause  
2 this.**

3 Q Well, they're saying hey obligor, it's  
4 your obligation to deliver this alien in  
5 accordance to the terms of your bond, right?

6 A **Sure. It is an element of the bond.**

7 You can deliver the alien and depending on what  
8 happens in the case that you've just gave me, you  
9 see it says purpose interview, so this would not  
10 be a removal, so this person would walk out of  
11 this office.

12 Q Okay. But I'm just -- okay?

13 A I'm sorry, I'm going to answer. You  
14 walk up to this person's house, you go knock on  
15 their door, throw them in the handcuffs, throw  
16 them in the back of your van and take them to the  
17 ICE office. When this interview is over, they're  
18 walking home. And if you treated the immigrant  
19 that way, they're never going to come back to  
20 court. This is why the idea that the co-obligors  
21 are supposed to go out and round people up is  
22 foolish.

134

136

1 Q Mr. Donovan, you're not answering my  
2 question. You keep going.

3 A **If your client did that, none of these  
4 people would appear.**

5 Q Okay. I just want you to answer --  
6 today's deposition is about us getting facts,  
7 okay, and getting your personal knowledge, okay?

8 MR. SHOREMAN: It's not about getting  
9 his personal knowledge.

10 MS. KATSANTONIS: Yes.

11 MR. SHOREMAN: He's a corporate  
12 representative.

13 MS. KATSANTONIS: Yes.

14 Q So what I'd like to do is limit the  
15 answers to my questions and you will have an  
16 opportunity to explain the whole process and your  
17 thoughts on the whole process at the appropriate  
18 time. But today I'd like you to try to stick to  
19 my questions.

20 A **I believe I've answered your questions.**

21 Q Okay. So my question is --

22 A **And I'll continue to do so.**

1 Q My question is pretty simple. This was  
2 an I-340 notice and it's to the obligor to deliver  
3 the alien, correct?

4 A **It is a notice to the obligor, yes.**

5 Q And the obligor here is being sent to  
6 RLI Insurance Company, correct?

7 A **That's right.**

8 Q And it says under the terms of the  
9 delivery bond you posted, ICE is making a demand  
10 upon you to deliver the alien or have the alien  
11 appear, correct?

12 A **Right. Because the alien is the one  
13 who's scheduled to appear.**

14 Q Right?

15 A **Correct.**

16 Q And the deliver bond -- the notice to  
17 deliver is telling the obligor to cause the  
18 immigrant to appear as set forth in the bond,  
19 right?

20 A **Correct.**

21 Q Okay. And under warning, the bond --  
22 the notice provides that failure to deliver or

1 have the alien appear in accordance with this  
2 demand may result in a declaration of breach of  
3 the bond, right?

4 A **That's correct.**

5 Q So the breach notice is a notice that  
6 the bond obligation to deliver the alien has been  
7 breached?

8 A **Right.**

9 Q And then the notice says failure to  
10 deliver may result in a breach -- a declaration of  
11 breach and a warrant for the arrest of the alien  
12 may be issued?

13 MR. SHOREMAN: Objection. You're not  
14 reading the whole sentence.

15 Q Well, I can read the whole sentence.

16 MR. SHOREMAN: Appreciate it.

17 Q Failure to deliver or have the client  
18 appear in accordance with this demand may result  
19 in a declaration of a breach of the bond, its  
20 forfeiture to the government and a warrant for the  
21 arrest of the alien may be issued, right?

22 A **Sure, that's true. Yeah.**

Transcript of Micheal Paul Donovan, Corporate Designee

35 (137 to 140)

Conducted on March 3, 2020

137

1 Q So that even if the bond is forfeited  
2 there still may be a warrant for the arrest of the  
3 alien issued?

4 A The key word is maybe. So in any of  
5 these instances where an immigrant has an issue  
6 that they're communicating to the ICE officer,  
7 they're not going to issue a warrant. They  
8 typically would issue the warrants after that.  
9 But they certainly could. At any point in time  
10 ICE could issue an arrest warrant for any  
11 immigrant.

12 Q Right.

13 A I mean, they could certainly do that.

14 Q And they advise you -- they advise the  
15 obligor specifically in this notice that they --  
16 if the alien does not appear, that that may result  
17 in a warrant, right?

18 A Sure.

19 Q And --

20 A Are we moving past this one?

21 Q Yes.

22 A Okay.

138

1 Q Thank you.  
2 So with regard to a breach notice --  
3 (Donovan Exhibit 6 marked for  
4 identification and attached to the transcript.)

5 Q All right. So looking at the second  
6 page of this document, there's an I323 form?

7 THE VIDEOGRAPHER: Vivian, if you could  
8 once again take it off and put it back on.

9 MS. KATSANTONIS: Yeah, sorry. It's  
10 not on, that's probably why.

11 A I will point out that in the cover  
12 email on this Laura seems to disagree with your  
13 expert. Your expert seems to think it happens on  
14 delivery. I think on final claim.

15 Q Well, what RLI does --

16 A The universe is still not \$10 million.

17 Q Thank you for that edification. So  
18 looking at the I323 form?

19 A Yes, ma'am.

20 Q This is notice of immigration bond  
21 breached?

22 A Yes, ma'am.

139

1 Q And so it references the condition of  
2 the bond has been -- having been violated?

3 A Right.

4 Q Right. And it has been determined the  
5 bond has been breached, right?

6 A Right. That's why they're making you  
7 pay it.

8 Q Right. And they say -- and they  
9 reference the demand to deliver, correct?

10 A They do make that reference, yes.

11 Q Okay. And so when the bond breach  
12 notice is delivered from the Department of  
13 Homeland Security, it's the result of the  
14 obligor's failure to deliver pursuant to the terms  
15 of the bond, right?

16 A Can you repeat that? I'm sorry, I just  
17 kind of got lost in your sentence there.

18 Sounded --

19 Q The bond breach notice is provided  
20 based on the failure of the obligor to comply with  
21 the terms of the bond and deliver the immigrant,  
22 right?

140

1 A In certain circumstances. As you can  
2 see on the bond breach, there are multiple  
3 circumstances under which a bond can be breached.  
4 But, yes, in this case and in the majority of  
5 cases the RLI breached bonds is because the demand  
6 was made and the individual didn't appear.

7 Q And so looking back at the -- first of  
8 all, so the -- there's not a bond breach notice  
9 issued for failure to make a payment, right?

10 A Failure to make what payment?

11 Q Penal sum of the bond, right?

12 A There's not a what issued?

13 Q Bond breach notice.

14 A No, because you're paying a bond. So  
15 how would you --

16 Q Right.

17 A We would breach a breach. So you're  
18 suggesting that you would be breached for not  
19 paying a breach.

20 Q I was trying to understand. Well, let  
21 me just say this again.

22 The obligation is to deliver the alien,

Transcript of Micheal Paul Donovan, Corporate Designee

36 (141 to 144)

Conducted on March 3, 2020

1 right?  
 2 **A That is an obligation.**  
 3 Q Well --  
 4 **A It is an obligation under the bond, it**  
**5 is not the obligation, there are multiple**  
**6 obligations that the immigrant has.**  
 7 Q Okay.  
 8 **A And it's not the first one. The first**  
**9 one is actually, you know, abiding by the**  
**10 conditions that the judge of the ICE office has**  
**11 set. The second might be going to hearings.**  
**12 We're talking about an expansive list of**  
**13 conditions.**

14 Q Right. But none of the conditions are  
 15 you just pay a sum certain?

16 **A Yeah, at the end of the day if a bond**  
**17 breaches you pay a certain sum.**

18 Q After the bond breaches?

19 **A Right.**

20 Q After the bond breaches.

21 **A Of course. And thank you. Exactly,**  
**22 after the bond breaches, after all appeals have**

1 **been made and there's a final claim on the bond,**  
**2 then it's a claim. Until then, it's not due.**

3 Q Okay. That's your -- okay. But I'm  
 4 getting back -- there's no condition of the bond  
 5 that you have to pay money instead of delivering  
 6 an alien or any of the other conditions?

7 **A It is literally the ultimate condition**  
**8 of the bond. It's literally in the -- in English**  
**9 on the contract. I don't understand --**

10 Q Let me get back --

11 **A I don't understand this question.**

12 Q Let me get back to it. There's no bond  
 13 breach I323 notice issued based on a failure to  
 14 pay a sum certain, right?

15 **A What sum?**

16 Q Exactly, right? The reason you get a  
 17 bond breach notice is for your failure to comply  
 18 with the terms of the bond?

19 **A It's for the -- the immigrant didn't**  
**20 comply with terms of their bond. What payment do**  
**21 you think the immigrant has to make?**

22 Q Well, nobody -- I'm asking you.

141

1 **A No, there's --**  
 2 Q There's no --  
 3 **A There are filing fees and things like**  
**4 that. But that's not the breach. I mean, that's**  
**5 not what the bond is.**

6 Q The bond is you have to satisfy  
 7 conditions --

8 **A The ultimate condition of the bond is**  
**9 you have to pay if there's a breach and there's a**  
**10 breach with a final determination made.**

11 **That's what the bond breach is. You**  
**12 either this or that.**

13 Q Okay. Can you discharge a bond by  
 14 paying it at any time?

15 **A Can you discharge a bond by paying it**  
**16 at any time. No, I don't think you can.**

17 Q Right. You have to wait for there to  
 18 be some sort of breach of a condition.

19 **A Otherwise there --**

20 Q Just let me finish my question. Right?  
 21 You have to wait --

22 The only time to pay is after the

142

1 conditions set forth in the bond haven't been met  
 2 and there's a bond breach and it's after that  
 3 point in time that the penal sum will be required  
 4 to be paid, right?

5 **A It's the letter of our defense,**  
**6 absolutely. It's a breach, it's a claim --**

7 Q Okay. And so there's no --

8 MR. SHOREMAN: Let him --

9 **9 -- and then you pay on the claim after**  
**10 all of the appeals have been exhausted.**

11 Q Right. So you can't -- I'm correct  
 12 that you can't simply pay a bond at any point in  
 13 time to release the obligation under a bond?

14 **A Ms. Katsantonis.**

15 Q Is that correct?

16 **A Ms. Katsantonis --**

17 MR. SHOREMAN: Objection.

18 **A It's an either/or. You comply or you**  
**19 pay. You comply or you pay.**

20 Q Well, no. You never have to pay if you  
 21 comply, right?

22 **A Right. That's why you comply or you**

143

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Transcript of Micheal Paul Donovan, Corporate Designee

37 (145 to 148)

Conducted on March 3, 2020

145

147

**1 pay.**

2 Q Right. And you can't pay without the  
3 steps of compliance first having taken place,  
4 right?

**5 A Then you wouldn't want to, right? You  
6 want the person to be –**

7 Q You can't is my question.

8 MR. SHOREMAN: Objection. The question  
9 is -- read that question back, please.

10 (The requested text was read by the  
11 reporter as follows: "Right. And you can't pay  
12 without steps of compliance first having taken  
13 place, right?")

14 MR. SHOREMAN: I don't understand the  
15 question. Is there a question pending?

16 MS. KATSANTONIS: No, he already  
17 answered it.

18 MR. SHOREMAN: Okay.

19 Q And is it Nexus' goal to have the  
20 immigrants comply with the terms of the bond  
21 before having to pay?

**22 A Always. Because we want the immigrant**

**1 to do well. We want them to come out of the  
2 shadows and be whole and the best way to do that  
3 is to comply with the conditions and be fully a  
4 part of the community.**

5 Q Right. And you also don't want to have  
6 to pay bond amounts or bond penalties, right?

**7 A Well, I mean obviously that is a  
8 factor. But the human factor is much more  
9 important to me.**

10 Q Sure. And looking again at the  
11 immigration bond breach form?

**12 A Yes, ma'am.**

13 Q After the --

14 MR. SHOREMAN: Exhibit 6?

15 THE WITNESS: Yes, sir.

16 Q Let me see. After the boxes, doesn't  
17 the bond form provide any cash or U.S. bonds  
18 pledged as security for the above-referenced bond  
19 will be forfeited to the United States or in the  
20 case of the surety bond, the surety invoice for  
21 the full amount of the bond if the decision is not  
22 appealed in accordance with the procedures

1 described below?

**2 A That is what it says, yes, ma'am.**

3 Q Okay. And the bond form provides that  
4 the right to appeal would be within 30 days of the  
5 notice, correct?

**6 A That's right. And if you don't appeal  
7 then the claim is final.**

8 MR. SHOREMAN: Ms. Katsantonis, if  
9 you're finished with that line of questioning, my  
10 client did have an opportunity to review those  
11 invoices and he can answer those questions that  
12 you had prior to lunch.

13 Q Sure.

**14 A Yeah, the total number of invoices that  
15 we've received or that we paid are 1,146.**

16 Q Okay. Now let's just -- let me just  
17 break that down.

**18 A But that's not notices, the I-340,  
19 those things that you also asked for, we don't  
20 track that so I don't have that, I would have to  
21 count those, which would take a little longer than  
22 the 30 minutes I had at lunch.**

146

148

1 Q So you're not prepared to do that  
2 today?

**3 A No, because we don't keep those  
4 numbers.**

5 Q So, you said and I'm a little confused.  
6 Invoices received or paid. So I'm kind of  
7 confused by what that number means. Is this on  
8 all --

**9 A It's across the board.**

10 Q Okay. And so why do you say received  
11 or paid?

**12 A Perhaps I was being inartful. I meant  
13 this is the total number that we received. This  
14 is -- the record that I have that we've received,  
15 1,146 notices of invoice.**

16 Q Okay.

**17 A I apologize.**

18 Q Okay. Is that 1,146 invoices on 1,146  
19 different bonds?

**20 A Yes.**

21 Q Okay.

22 MR. SHOREMAN: Was there a further

Transcript of Micheal Paul Donovan, Corporate Designee

38 (149 to 152)

Conducted on March 3, 2020

1 question that you wished him to identify those  
2 bonds?

3 MS. KATSANTONIS: We will --

4 Q And do you know how many of those  
5 invoices are RLI's bond?

6 A **Yes, it would be the 290.**

7 Q Well, the 290 is what you've paid. Are  
8 there not outstanding invoices?

9 A **I'm sorry. So that wouldn't include  
10 the outstanding, yeah.**

11 Q Yeah, I just want to make sure.

12 A **That's right.**

13 MR. SHOREMAN: So again  
14 Ms. Katsantonis, I want to make sure that we -- to  
15 avoid any issue of compliance with this 30(b)(6),  
16 is it your question that you want him to identify  
17 bonds to each of the 1,146 invoices he just  
18 testified to?

19 MS. KATSANTONIS: No, I don't need him  
20 to identify all the bonds, the 1,146, but what I'm  
21 trying to get an understanding of and I'm a little  
22 confused by is --

150 1 Q Are those invoices received and paid  
2 because since it did not include the outstanding  
3 RLI invoices, it very well may not include the  
4 outstanding invoices for other sureties?

5 A **It would be outstanding invoices  
6 received and paid.**

7 Q Received and paid, okay.

8 So do you know how many outstanding  
9 invoices -- how many invoices have been received  
10 on bonds requested by Nexus in total, whether paid  
11 or not?

12 A **Can you give me a minute to try to find  
13 out?**

14 Q Sure. I guess we can do that during a  
15 break.

16 A **I can.**

17 Q Okay.

18 A **Which, by the way I'm going to need to  
19 take one at 3:30. So if I can set expectations  
20 that would be awesome. Thank you. Probably  
21 another hour.**

22 MR. SHOREMAN: Let me write this down.

149

151

1 You've asked him, Ms. Katsantonis, for a number of  
2 bonds that are outstanding?

3 MS. KATSANTONIS: How many invoices  
4 have been issued on all of the Nexus bonds?

5 MR. HARRIS: You want me to rephrase it  
6 for her since I would be doing that anyway?

7 MR. SHOREMAN: Go ahead.

8 MR. HARRIS: How many bonds have had  
9 one or more invoices issued on them?

10 MR. SHOREMAN: Got it.

11 MR. HARRIS: Total and then just unique  
12 to RLI.

13 MR. SHOREMAN: That differs from what  
14 you just said.

15 A **It would because sometimes invoices get  
16 canceled if there's an appeal.**

17 MR. HARRIS: And they all haven't been  
18 paid either, right?

19 A **The vast majority, I think. How many  
20 invoices do we have that are outstanding that are  
21 within that 120-day window. Not a lot.**

22 MR. SHOREMAN: And unique.

150

152

1 A **But I understand --**

2 MR. SHOREMAN: Thank you.

3 BY MS. KATSANTONIS:

4 Q All right. So with regard to RLI  
5 bonds, RLI contends that the aggregate amount --  
6 or do you know how many -- strike that.

7 Sorry. Do you know how many RLI bonds  
8 remain outstanding?

9 A **I do have that. But I can't remember  
10 and now I'm not going to remember where I found it  
11 and I have it somewhere. Do you understand how  
12 frustrating that is? That's the thing about  
13 30(b)(6) because I'm like I know I saw that.  
14 Where did I see it? I literally had that broken  
15 up.**

16 So approximately 25 million. My  
17 understanding is that there are 385 bond  
18 cancellations totaling 5 million.

19 Q I'm sorry, can you say that again  
20 slower.

21 A **Yeah. There are 395 bond cancellations  
22 in an amount of \$5,117,500. So presumably you**

Transcript of Micheal Paul Donovan, Corporate Designee

39 (153 to 156)

Conducted on March 3, 2020

153

1 would -- you could subtract that amount from the  
 2 30,227,950. Which is the total face value of the  
 3 bonds and that would give us the total.

4 Q So going through your numbers, you had  
 5 290 bonds that have been paid, right?

6 A Right.

7 Q Do you recall that testimony earlier  
 8 today?

9 A Correct.

10 Q And now you're saying 395 canceled.

11 A Well, understand your client hasn't  
 12 given us cancellation for the last two years, so  
 13 that's a stab in the dark based on what you've  
 14 produced in response to our interrogatories.  
 15 Because you've produced numbers in response to our  
 16 interrogatories of what bonds have been canceled  
 17 that literally states that certain bonds are  
 18 canceled but then you say you never received the  
 19 cancellation. So I can't make reason of that.

20 Q Okay. Earlier --

21 A So based on the records we have, my  
 22 understanding is that we've had 395 bond

155

1 A I did an investigation of looking for  
 2 the bond cancellations over the last two years.  
 3 Laura Piispanen used to send them to us, right, we  
 4 used to get them from RLI. I don't have any bond  
 5 cancellations. So I don't have the ability to  
 6 determine who's being -- you know, I have a  
 7 spreadsheet from you guys that say that bonds are  
 8 canceled, bonds I've paid breaches on. And in  
 9 response to a letter that counsel sent, you guys  
 10 said you paid it too. You didn't -- but you sent  
 11 me a spreadsheet saying it was canceled. So  
 12 without having any independent knowledge of what  
 13 those documents are, that's why we've asked  
 14 your -- asked you to provide us those documents.

15 Q Did you make an inquiry of your --  
 16 either your staff or your counsel as to whether or  
 17 not Nexus was receiving bond cancellation notices  
 18 from RLI?

19 MR. SHOREMAN: Objection. And let me  
 20 just caution the witness, any communications with  
 21 counsel would be privileged and you waive that  
 22 privilege by disclosing that.

156

1 cancellations but it could be more.

2 Q Okay.

3 A Certainly could be.

4 Q All right. And that number comes from  
 5 RLI, the cancellation --

6 A Correct.

7 Q -- bond? Okay. And you say that Nexus  
 8 has not received cancellation notices from RLI  
 9 since when?

10 A February 2020.

11 Q 2020?

12 A Sorry, 2018, my apologies.

13 Q And what is the basis of your  
 14 understanding?

15 A What is the basis of my understanding?

16 Q Yes?

17 A That we used to receive cancellations  
 18 and we don't anymore. We used to get copies of  
 19 the cancellations and we don't get them.

20 Q When you say "we don't," what is  
 21 that -- based on what? Who told you that or what  
 22 investigation did you do to derive that?

1 MS. KATSANTONIS: I'm just asking him  
 2 whether he's made an inquiry.

3 A I have spoken to counsel.

4 Q Okay. And so --

5 A And I'm not going to disclose those.

6 Q No. But your testimony is that Nexus  
 7 has not received bond cancellation notices from  
 8 RLI since 2018?

9 A Correct.

10 Q Okay.

11 MR. SHOREMAN: I think a couple minutes  
 12 ago it was 2019.

13 A It's been February 2018.

14 MR. SHOREMAN: '18, okay.

15 MS. KATSANTONIS: I'm going to mark  
 16 this exhibit.

17 (Donovan Exhibit 7 marked for  
 18 identification and attached to the transcript.)

19 MR. SHOREMAN: Thank you.

20 Q So this is an email from  
 21 Laura Piispanen from RLI to a number of people  
 22 which includes Erik Schneider at Nexus, Hazzar

## Transcript of Micheal Paul Donovan, Corporate Designee

40 (157 to 160)

Conducted on March 3, 2020

157

159

1 Perdomo at Nexus, Richard Moore at Nexus as well  
2 as a number of your attorneys, correct?

3 **A I can see that, yes.**

4 Q And isn't RLI providing you with a copy  
5 of an immigration bond cancellation?

6 **A I do see an email that I'm not on where**  
7 **there is one cancellation. But we have**  
8 **significant numbers of cancellations that you**  
9 **reference on a spreadsheet that you've produced**  
10 **that don't have cancellations that have been**  
11 **produced to us. So you can show me one. I can**  
12 **show you that there are -- there are -- on your**  
13 **own production, there are bonds that say**  
14 **they're -- that you've received cancellations on**  
15 **that you've never forwarded the cancellations for.**  
16 **That's true. And we have asked that you make that**  
17 **right. We asked that you make it right about the**  
18 **one particular client last week and that you**  
19 **further produce all the records so we would have**  
20 **them. We haven't received, as far as I**  
21 **understand, any of the further production. And so**  
22 **I have a significant number of RLI clients on a**

1 Q How do you know that? How do you know  
2 that, Mr. Donovan, when you testified --

3 **A I'm sorry --**

4 Q -- that you haven't received any --

5 **A Are you going to continue to interrupt**  
6 **me or can I answer a question?**

7 Q Yes?

8 **A As you are well aware because you've**  
9 **received correspondence, we have been looking at**  
10 **your discovery responses and your discovery**  
11 **responses tell us that certain bonds are canceled**  
12 **that we paid. Now that's a problem for me, right?**  
13 **And so I've been following up and I would --**

14 Q Which ones?

15 **A -- ask for the documentation.**

16 Q Which one, it was just one you sent a  
17 notice.

18 **A There's one specific and then there are**  
19 **a large number of bonds where you guys say they're**  
20 **canceled, we haven't received the cancellations.**  
21 **What we have asked you to do is provide us all the**  
22 **cancellations. Why can't you do that? If you**

158

160

1 **spreadsheet that you guys produced that say that**  
2 **those bonds are canceled without any detail --**

3 Q Mr. Donovan, I would suggest that  
4 you --

5 **A -- attached to it and my point is that,**  
6 **I mean, that's a problem.**

7 Q Mark this.

8 (Donovan Exhibit 8 marked for  
9 identification and attached to the transcript.)

10 Q Here's another email communication from  
11 Laura Piispanen dated November 13th, 2019,  
12 forwarding a notice of immigration bond canceled  
13 and that is similarly sent to Mr. Schneider of  
14 Nexus, Hazzar Perdomo, and numerous -- Richard  
15 Moore, and numerous counsel of Nexus; is that  
16 correct?

17 **A And I can certainly see that I'm not on**  
18 **this email and didn't see it before. But what I**  
19 **will tell you is that, again, we have a**  
20 **significant number of bonds that you guys have**  
21 **reported canceled that you've not provided**  
22 **cancellation for.**

1 **have them why not just give them to us?**

2 Q Mr. Donovan, are you not aware that you  
3 have been contemporaneously given notice after  
4 notice of all the bond cancellation forms?

5 **A I do not believe that's true.**

6 Q Well, are you --

7 **A We have bonds cancellations that are on**  
8 **your spreadsheet --**

9 Q Let's go through a couple more. We'll  
10 just keep going through them then.

11 **A Would you give me the one to the client**  
12 **that we produced to you on Friday. The one that**  
13 **we --**

14 Q We gave it to you yesterday.

15 **A But you -- why is it you have it listed**  
16 **as canceled, Ms. Katsantonis? Why is it that you**  
17 **have it listed on the canceled in one place,**  
18 **Ms. Katsantonis, and on another you're demanding**  
19 **that we pay it?**

20 **See, your records don't match and**  
21 **you've got to provide an explanation for that.**

22 Q Mr. Donovan. Mr. Donovan, this is my

Transcript of Micheal Paul Donovan, Corporate Designee

41 (161 to 164)

Conducted on March 3, 2020

161

163

1 deposition of you not mine -- yours of me. So  
2 let's move forward.

3 **A Right, but --**

4 Q Can you mark this, please?

5 **A I mean, you can continue to throw**  
6 **documents in front of me to show me that there's**  
7 **been a cancellation here or there that's been**  
8 **delivered, but unless you're prepared to show us**  
9 **all the cancellations and have them consistent**  
10 **with the production that you provided to attorneys**  
11 **of the cancellations, then this is just --**

12 Q I believe your testimony, Mr. Donovan,  
13 is that there have been no cancellation notices  
14 provided to Nexus in the last two years, wasn't  
15 that your testimony?

16 **A As I was aware.**

17 Q Right. But now you realize --

18 **A What I'm saying --**

19 Q You realize your testimony was  
20 erroneous, right, Mr. Donovan? That in fact,  
21 there were consistent notices of cancellation  
22 provided to Nexus?

162

164

1 MR. SHOREMAN: Objection. Objection.  
2 **A I disagree. I don't think this is**  
3 **consistent. One-off emails are not consistent.**  
4 **You have --**

5 Q How many do you see? I just sent you  
6 three. Would you like me to go get 50 more?

7 **A I'd like you to go get them all.**

8 MR. SHOREMAN: Objection, again.

9 **A Bring them all here and let us take**  
10 **them. By the way --**

11 Q So your testimony was inaccurate,  
12 right, Mr. Donovan?

13 **A No, it's not.**

14 Q You said no. You said we haven't  
15 received any notices since 2018.

16 **A Why not --**

17 MR. SHOREMAN: Objection.

18 **A Why not --**

19 MR. SHOREMAN: Please, please.

20 **A Why not just be honest?**

21 MR. SHOREMAN: You're being  
22 argumentative, Ms. Katsantonis.

1 Q All right. Let me just --

2 MS. KATSANTONIS: I apologize if you  
3 think so.

4 Q So looking at this 2018 one,  
5 Mr. Donovan.

6 **A I would like to have all of the I340s.**  
7 **I would like to have all of the I340s. I'll**  
8 **answer questions about the I340s, I'd like a**  
9 **production of them. I would like them here.**

10 Q Mr. Donovan, looking at the exhibit in

11 front of you, it's an Exhibit dated April 2nd.

12 (Donovan Exhibit 9 marked for  
13 identification and attached to the transcript.)

14 Q This is one dated April 2nd, 2018, sent  
15 to notice at Nexus help. It's another copy of a  
16 notice of immigration bond cancel. Do you see  
17 that, Mr. Donovan?

18 **A I do.**

19 Q And do you believe --

20 MR. SHOREMAN: Let me just go off -- I  
21 don't want to go off the record, I want to say  
22 this on the record. My client's issue is that

1 this should have been produced in response to  
2 discovery.

3 MS. KATSANTONIS: We're going off the  
4 record. This is not appropriate. This is my  
5 deposition.

6 MR. SHOREMAN: Go on.

7 MS. KATSANTONIS: I'm not going through  
8 a discovery dispute.

9 MR. SHOREMAN: Well, you are going  
10 through a discovery dispute.

11 MS. KATSANTONIS: I'm addressing  
12 Mr. Donovan's testimony.

13 MR. SHOREMAN: He said he did not  
14 receive these in discovery as he should have.

15 MS. KATSANTONIS: That's not what he  
16 said.

17 MR. HARRIS: That's not what he said.  
18 He's not received a notice of cancellation in two  
19 years.

20 MR. SHOREMAN: You put four in front of  
21 him.

22 MR. HARRIS: In two years he hasn't

Transcript of Micheal Paul Donovan, Corporate Designee

42 (165 to 168)

Conducted on March 3, 2020

165

167

1 received one.

2 MS. KATSANTONIS: Right.

3 MR. SHOREMAN: Okay. Spend the rest of  
4 the day on a "gotcha."

5 MS. KATSANTONIS: I'm just trying to  
6 make the record clear.

7 THE WITNESS: Well, if you make it --

8 MR. SHOREMAN: The record would be  
9 clear if you meet your discovery obligations and  
10 provide these documents.

11 Q Is it true that you did -- isn't it  
12 true, Mr. Donovan, that you did receive  
13 cancellation notices within the last two years  
14 from RLI?

15 MR. SHOREMAN: Objection. The  
16 documents don't have any evidence whatsoever that  
17 Mr. Donovan received them.

18 MS. KATSANTONIS: He's speaking on  
19 behalf of Nexus. They all have Nexus' names on  
20 it.

21 MR. SHOREMAN: Then why don't you ask  
22 that question.

166

168

1 MR. HARRIS: It's a 30(b)(6)  
2 deposition, so "you" means Nexus. She just did.

3 MS. KATSANTONIS: It's a preliminary  
4 question.

5 MR. SHOREMAN: Why don't you ask that  
6 question.

7 MS. KATSANTONIS: Mr. Shoreman, please.

8 MR. SHOREMAN: You didn't, you said --  
9 BY MS. KATSANTONIS:

10 Q Mr. Donovan, isn't it true that Nexus  
11 received notices of cancellation from RLI over the  
12 last -- course of the last two years?

13 A It appears that Nexus did receive a  
14 smattering of notices. Nexus would hope that RLI  
15 would produce all of the cancellations so that we  
16 could determine which invoices you have improperly  
17 collected and not refunded to us.

18 Q And with regard to -- so when you  
19 testified earlier that Nexus had received no  
20 notices of cancellation in the last two years,  
21 that was inaccurate?

22 A I missed the four that you put in front

1 of me that were not sent to me, yes. That is  
2 correct. However, I would renew my request that  
3 RLI actually comply with the discovery order and  
4 provide all of the cancellations.

5 Q Is it your testimony that no more than  
6 the four that I've provided you were provided from  
7 RLI to Nexus?

8 A I think my testimony was you provided  
9 me four.

10 Q Right?

11 A I think that's what I said.

12 Q But do you --

13 A My testimony is what the words I said  
14 are. I mean, that's what I said. I said you  
15 provided me four. It would be my hope that you  
16 would provide the rest. If you want to do that  
17 right now we can do it because I want to see them  
18 all.

19 Q Well --

20 A Or if you want to give them to me after  
21 that's fine too.

22 Q Mr. Donovan, my testimony -- my

1 question to you is based on your testimony. So  
2 my -- I'm just trying to get your testimony  
3 accurate.

4 A I think you are testifying.

5 MR. SHOREMAN: Please don't direct my  
6 witness, Ms. Katsantonis. Go ahead.

7 MR. HARRIS: Please instruct your  
8 witness then to answer the questions instead of  
9 asking questions of --

10 MS. KATSANTONIS: Counsel.

11 MR. SHOREMAN: Continue in the vein you  
12 are, Mr. Donovan, and answer the question freely  
13 and responsively as you are.

14 BY MS. KATSANTONIS:

15 Q I just want to be clear that you --  
16 that you -- do you contend that there are, other  
17 than the four that I've shown you, is it your  
18 testimony that Nexus received no other notices of  
19 bond cancellation forms in the last two years from  
20 RLI?

21 A My testimony is that RLI has not  
22 provided all of the bond cancellations as

Transcript of Micheal Paul Donovan, Corporate Designee

43 (169 to 172)

Conducted on March 3, 2020

169

1 received. I'm hartened that we have apparently  
2 received a few. If there are more, that's  
3 wonderful.

4 Q So you don't know?

5 A If you'll produce -- if you can produce  
6 a full production of them, I guess this -- you  
7 asked a question earlier about bad faith. This is  
8 bad faith. Hiding the ball, right? What is RLI  
9 trying to hide? Why not just give us the  
10 cancellation. You're trying to hide the fact that  
11 you collected money on top of those cancellations  
12 and that you received that money under false  
13 pretenses. That what you're trying to hide.

14 That's what's happening here and you know that.

15 MR. HARRIS: Can you --

16 MR. SHOREMAN: Vivian. No.

17 Q Do you know sitting here, how many bond  
18 cancellation forms Nexus provided to -- RLI  
19 provided to Nexus?

20 A I do not.

21 Q So you don't know whether or not --

22 A I know that we --

171  
1 whether in the last two years how many bond  
2 cancellation forms were provided to Nexus from  
3 RLI?

4 A I do not.

5 Q Okay. And can you estimate how many  
6 bond cancellation forms were provided to Nexus  
7 from RLI?

8 A I cannot. I know we have that number  
9 and I can get it for you. I'll get it for you at  
10 the break.

11 Q And do you know how many RLI bonds are  
12 outstanding?

13 A I can do the calculation based on what  
14 we just talked about, the total number of bonds  
15 outstanding versus the total number of  
16 cancellations. But again, it's cancellations as  
17 reported by RLI and since we don't have the full  
18 data, I don't know that those numbers are  
19 accurate.

20 Q All right. RLI contends that the  
21 aggregate, that there are 1,767 bonds that have  
22 not yet been discharged.

170  
172

1 Q -- it's four or 100 or 200; is that  
2 correct?

3 A Well, are you going to finish a  
4 question so I can answer it, Ms. Katsantonis? You  
5 continue to ask the question after you've asked  
6 it. It's a very confusing thing.

7 Q Mr. Donovan. If you could start your  
8 answer with yes or no and then if you want to  
9 explain why it's a yes or no, that's fine. But my  
10 question to you is do you know how many bond  
11 cancellation forms RLI has provided to Nexus in  
12 the last two years?

13 A Yes. Let me -- I think -- so what we  
14 have and here's what I know, okay? I know that  
15 there are approximately 395 bond cancellations  
16 based on the production that you have made. That  
17 is including actual cancellations and spreadsheet  
18 representations. I want all the cancellations.  
19 That's what I'm saying.

20 Q Okay?

21 A I want all the cancellations.

22 Q So aside from discovery, do you know

1 Do you know whether that's accurate?

2 A I would have no way of knowing.

3 Q Can you dispute that number?

4 MR. SHOREMAN: Objection. Objection.  
5 You're asking him -- you used the term discharge  
6 and it's undefined. I object to the question.

7 Answer if you can.

8 A And I'm going to -- so can you repeat  
9 the question?

10 Q Yeah, sure.

11 RLI contends that there are 1,767 RLI  
12 bonds that had not -- that have not yet been  
13 discharged.

14 Can you dispute that?

15 A Based on the information I have and the  
16 cancellations I've received, I can't dispute that.  
17 I wouldn't necessarily want to do that.

18 Q Okay. And then RLI --

19 A I'm sorry. Really quick, I have a bio  
20 break. It's not going to take long but I'm going  
21 to be right back. Sorry, guys.

22 THE VIDEOGRAPHER: We are going off the

Transcript of Micheal Paul Donovan, Corporate Designee

44 (173 to 176)

Conducted on March 3, 2020

1 record at 15:02.

2 (Recess taken.)

3 THE VIDEOGRAPHER: We are back on the  
4 record at 15:11.

5 BY MS. KATSANTONIS:

6 Q All right. And then prior to the  
7 break, we were talking about the number of RLI  
8 outstanding bonds and so I just had one more  
9 question with that.

10 RLI contends that the aggregate amount  
11 of those 1,767 bonds that have not yet been  
12 discharged is 21,404,950.

13 Do you dispute that figure?

14 A I believe that's correct.

15 Q Okay. All right. Now, we were talking  
16 about, and you're much more familiar with this  
17 area than I am.

18 A And let me apologize -- by the way  
19 because I know this area and so none of my answers  
20 are meant to sound like, you know, when I looked  
21 at you weird, I was just trying to understand your  
22 question because it didn't make sense to me. I'm

174  
1 not trying to be -- you know, I want to be  
2 respectful.

3 Q I appreciate that.

4 A Yeah, of course.

5 Q In fact, I was going to just say the  
6 same thing. I was going to ask you about appeals  
7 and disputes, obviously you know that area better  
8 than I do.

9 So I'm just trying to make sure you and  
10 I are on the same page when we're talking about  
11 something.

12 A Of course. I think that makes sense.

13 Q So do you recognize a distinction  
14 between bond breach appeals which are submitted  
15 within 33 days, you know, 30 days or 33 days of a  
16 bond breach notice and decided by DHS's  
17 administrative appeals office and disputes of bond  
18 breach invoices? Is there a distinction there?

19 A There is a distinction.

20 Q Okay. So can we use the word, you  
21 know, as we go forward when we talk about appeals,  
22 that's going to be the appeals of the bond breach

173

1 notice to the AAO?

2 A Right.

3 Q Okay. And then when we say disputes,  
4 we are going to be talking about bond breach  
5 invoices?

6 A Not necessarily. Because there's  
7 another category of disputes we probably have to  
8 identify and talk about.

9 Q Okay. What is that?

10 A And that is when a bond first breaches.  
11 So there's no invoice, right? It's just a breach.  
12 But when you have proof that the breach is  
13 invalid, that the breach was done incorrectly,  
14 right, you can submit a dispute to the bond unit  
15 officer and it requires a letter from the obligor,  
16 from the surety obligor. But you can dispute at  
17 that level and that -- when I talk about disputes,  
18 when I reference disputes that I want to be able  
19 to make, that's what I'm talking about, Vivian.  
20 So I just want to make sure we're understanding  
21 one another. It is possible if you file an appeal  
22 and you file the appeal late, it is possible that

175

176  
1 that can be considered a dispute, right?

2 But it's also possible to dispute a  
3 breach when it first occurs, before an invoice is  
4 ever issued. And that is the dispute process that  
5 I'm referring to.

6 Q Okay. So you kind of mixed terms there  
7 again. I just want to be careful that I  
8 understand it.

9 So you're talking about when a bond  
10 breach first happens, so within the 33 days.

11 A Correct.

12 Q Okay. Then within that 33 days, rather  
13 than actually filing an appeal, you're saying you  
14 can go to the bond unit officer?

15 A Yeah, the bond manager.

16 Q Okay.

17 A Each of the ICE officers that process  
18 bonds have a bond manager.

19 Q Right. And that requires a writing, a  
20 letter.

21 A The surety has to give permission, yes.

22 Q And then how -- yeah, where is that

Transcript of Micheal Paul Donovan, Corporate Designee

45 (177 to 180)

Conducted on March 3, 2020

	177		179
1 procedure outlined?		1 win on a dispute, right? Because the AAO is	
2 <b>A In the bond management handbook.</b>		2 looking for a case, you know, a case law. They're	
3     Q Okay?		3 looking for some kind of precedent. You have a	
4 <b>A The DHS's bond management handbook.</b>		4 legal issue. You have a notice issue. Some kind	
5 I'm sorry, let me be specific.		5 of defect issue.	
6     Q Okay. And how often -- right.		6     Q So my question was what kind of	
7         Are there any grounds that you can		7 pre-invoice dispute can you not raise on appeal?	
8 raise in that procedure that you couldn't also		8 <b>A I suppose you could raise the fact that</b>	
9 raise in an appeal procedure?		9 the person had complied and you could raise	
10 <b>A Yes.</b>		10 substantial compliance on appeal.	
11   Q What is that?		11         So there isn't anything that you	
12 <b>A Well, you can raise – the appeal</b>		12 couldn't raise on appeal, but you'd be making the	
13 feature is largely about questions of law or		13 argument on appeal under substantial compliance	
14 questions of like notice of defect, those types of		14 which is a difficult bar to meet, right? So it's	
15 things, right? A dispute is never about notice of		15 a difficult thing to do whereas going to the bond	
16 defect because that's appropriately taken before		16 manager that oversaw the inappropriate breach and	
17 the AAO. A dispute is when there is a – at the		17 having them fix their mistake is easier than going	
18 pre, I'm talking about the pre-invoice stage of		18 to an appeal office and waiting months for them to	
19 dispute, right? Because you can also file a late		19 read your brief and hope that they understand what	
20 appeal and it be called a dispute. So I want to		20 happened to them.	
21 make sure we're talking about the same thing. But		21   Q Okay?	
22 if you dispute a breach shortly after like what		22 <b>A It's just a much more direct and easy</b>	
	178		180
1 we're talking about, right, you can dispute the		1 way to do it.	
2 breach. You would dispute the breach based on the		2     Q On how many RLI -- are you familiar	
3 fact that there is some kind of error. You		3 with grounds of an appeal or dispute based on	
4 typically would use a dispute when there's an		4 DHS's failure to provide a questionnaire?	
5 error.		5 <b>A I am aware of that as an issue that has</b>	
6     Q What kind of error?		6 been raised on appeal by obligors.	
7 <b>A Maybe for example like I told you the</b>		7     Q And which of the three proceedings	
8 person got released and shipped to New York but		8 would that most appropriately be raised?	
9 then they get called into court two days later in		9 <b>A That would be raised appropriately –</b>	
10 the detention center they got released from. They		10 well, you can raise it – it would most	
11 can't even come back there if they want to so		11 appropriately be raised in an appeal.	
12 they're obviously not going to be there and		12   Q And have -- and has DHS rejected those	
13 they're obviously going to get a notice to deliver		13 appeals as a -- based on the failure to provide a	
14 for that. But it's not their fault, you see. So		14 questionnaire?	
15 what you would do is let's say the notice to		15 <b>A Many of them, yes.</b>	
16 deliver didn't get served or we didn't know about		16   Q Are there any that they have approved	
17 it or they didn't go and there's a breach, then --		17 or affirmed based on the failure to provide a	
18 in the same situation where are they going to send		18 questionnaire?	
19 the notice letter? They're going to send the		19 <b>A I believe we have had those. I don't</b>	
20 notice letter to where the person is.		20 believe any of them are RLI bonds, I have to check	
21   Q But can you raise that on an appeal?		21 but I'm relatively certain that none of them are	
22 <b>A You can, but you're much more likely to</b>		22 RLI bonds.	



Transcript of Micheal Paul Donovan, Corporate Designee

47 (185 to 188)

Conducted on March 3, 2020

185

1 THE VIDEOGRAPHER: We are back on the  
2 record at 15:42.

3 BY MS. KATSANTONIS:

4 Q All right. So before we took our break  
5 you were going to, Mr. Donovan, I believe you were  
6 going to check the number of invoices --

7 A Yes, ma'am.

8 Q -- for which Nexus has caused an appeal  
9 to be -- wait, let me strike that.

10 How many -- okay, so, first of all, we  
11 were going to ask, right, how many appeals on the  
12 Nexus bonds have been filed?

13 A Right. And I was able to gather that.

14 So our records indicate that 208 appeals have been  
15 filed on RLI bonds that are Nexus secured.

16 Q And what about program wide?

17 A Program wide, our figures indicate that  
18 1,457 appeals have been filed globally.

19 Q Okay. And of the 1,457 appeals filed  
20 globally, how many have been successful?

21 A Perhaps I could have anticipated that.

22 Nine of our RLI appeals have been successful. I

1 have that handy, quite proud to say. As far as a  
2 global appeal successful number, I'll have to get  
3 that for you. But I'll get it for you before we  
4 break today, okay?

5 Q Okay.

6 A Or I can go look. But you don't want  
7 that.

8 Q Of the nine RLI bond appeals that were  
9 successful, what were the grounds for those nine?

10 A I believe two, at least one or two of  
11 them was the Pereira decision, I believe. There  
12 were no deficiencies, and perhaps the best thing  
13 to do would be provide you the nine bonds on a  
14 spreadsheet with the reasons.

15 Do you want me to do that? Because I  
16 can absolutely do that.

17 Q Okay. Yes, I would like that. Sitting  
18 here today you don't know the basis for each of  
19 the nine, correct?

20 A Not off the top of my head. But we do  
21 have that information readily available. Happy to  
22 get it for you before we leave today.

187

1 Q Okay. And Nexus has paid a filing fee  
2 for all appeals whether it's RLI or the 1,457  
3 appeals?

4 A That's correct.

5 Q And of the appeals filed, the Nexus  
6 bond appeals, how many of those were based on the  
7 Pereira decision?

8 A Well, many were based on the Pereira  
9 decision, at least in part. We filed appeals for  
10 any bond that was the basis, the basis of which  
11 was a notice to appear that was issued without a  
12 time or date specific on it.

13 Q Right. But do you know how many bonds?

14 A I don't.

15 Q The vast majority of them or --

16 A The vast majority did not have the time  
17 or place and so the vast majority had Pereira as  
18 an element, yes.

19 Q Okay. And what about --

20 A Any that didn't have the time or place  
21 on the NTA, right, because that was the basis of  
22 the Pereira decision, so if it didn't say a time

188

1 or place it was added under Pereira. And the vast  
2 majority of bonds -- the vast majority of  
3 individuals arrested and issued NTAs before the  
4 Pereira decision were affected by it.

5 Q Okay. And how many of the appeals were  
6 based on DHS's failure to include a questionnaire  
7 or other paperwork within the bond breach notice?

8 A That might be an ancillary added  
9 element of the appeal. It would not be your main  
10 reason for appeal, but that would be added in any  
11 case where we didn't get a spreadsheet -- where we  
12 didn't get the appropriate information.

13 Q So the vast majority?

14 A The vast majority that we didn't get --  
15 yeah, I would say the majority. I don't know that  
16 I would say vast, because we do get  
17 spreadsheets -- or worksheets. But I would say  
18 the majority don't have worksheets.

19 Q So to be clear, the vast majority of  
20 the 208 appeals on RLI bonds are based on the  
21 Pereira decision?

22 A In part, yes.

Transcript of Micheal Paul Donovan, Corporate Designee

48 (189 to 192)

Conducted on March 3, 2020

189

191

1 Q And that would also apply to the 1,457  
2 appeals; the vast majority of those appeals were  
3 based on the Pereira decision?

4 A Right. That's a little more. I mean,  
5 RLI is sort of a snapshot in time, right? So once  
6 that issue is corrected by the federal government  
7 there would be no more Pereira appeals on that  
8 issue. So I would say, yes, but that number is,  
9 you know, significantly decreasing as a part of  
10 the global number because obviously the government  
11 has fixed there NTA issue.

12 Does that make sense?

13 Q Uh-huh.

14 Of the -- whether it's RLI bonds or the  
15 1,457 appeals, how many of those bonds were upheld  
16 on the Pereira decision grounds, how many of the  
17 appeals were granted based on pre?

18 A I'm going to have to get that number to  
19 you.

20 Q Will you be able to provide that  
21 information today?

22 A Yes. Of course.

1 breaches have been rejected as untimely?

2 A Okay. So I'm going to at our next  
3 break pull those and provide that information to  
4 you. And Ms. Katsantonis, the spreadsheet that  
5 the nine RLI I'm going to provide a spreadsheet  
6 with the reasons, the others I'm just going to  
7 provide, you know, the numbers. Because it would  
8 probably be too much for me to, you know, come up  
9 with that spreadsheet for all of them but I will  
10 provide you a spreadsheet of your nine and the  
11 reasons. And then I'll provide you the  
12 information -- I'll answer the questions on the  
13 other questions. But I just want to be clear that  
14 I'm going to have to get that and it's going to  
15 take me a few minutes. I could do it now or I  
16 could do it at a break.

17 Q Okay. A break would be fine. And then  
18 along those lines, so I asked you -- and that's --  
19 the information you get is how many submitted  
20 appeals of RLI have been rejected as untimely?

21 A Yeah, and the Pereira question.

22 Q Right. And do you know how many of RLI

190

192

1 Q How many submitted appeals of RLI bond  
2 breaches have been rejected as untimely?

3 A I'm sorry, Ms. Katsantonis, can I get a  
4 clarification on your prior question?

5 Q Sure?

6 A Did you want the number of Pereira  
7 granted appeals for RLI or the number of Pereira  
8 granted appeals universal or both?

9 Q Both. Thank you.

10 A All right.

11 Q Because you're also going to give us  
12 the figure of how many of the 1,457 appeals were  
13 successful?

14 A That's right.

15 Q And the basis of those -- right. And  
16 you were going to also give us the basis of each  
17 of the nine?

18 A Each of the --

19 Q RLI?

20 A Yours, right.

21 Q All right. So then my next question  
22 was how many submitted appeals of RLI bond

1 bond breaches appeals were confirmed to have been  
2 received by DHS within 33 days of the breach  
3 notice?

4 A Yeah, I can -- I can add that up.

5 Q Okay.

6 A But I'm going to have to use the same  
7 spreadsheet I'm going to use for the other  
8 questions so I'll just do that at the break and  
9 get you all those answers at once, if that's okay,  
10 Ms. Katsantonis.

11 Q Yes. Of the nine RLI bond appeals that  
12 you state have been sustained, how many of those  
13 resulted in a cancellation of the bond as  
14 confirmed by DHS's issuance of an I391 notice of  
15 cancellation?

16 A There would either be a re -- there  
17 either would be a notice of cancellation or  
18 redetermination or reclassification of the bond.  
19 I'll get those numbers for you. So I'll --

20 Q Okay.

21 A In the spreadsheet, Ms. Katsantonis, it  
22 will say whether it was a cancellation or whether

Transcript of Micheal Paul Donovan, Corporate Designee

49 (193 to 196)

Conducted on March 3, 2020

193

195

1 the breach was reissued – I'm sorry, the bond was  
2 reissued.

3 Q Like a reinstatement of the bond.

4 A Thank you so much. There's that  
5 inartful communication. I knew it would catch up  
6 to me.

7 Q Okay. So Nexus including through  
8 Juliana Johnson and payment of the filing fees has  
9 worked with Big Marco to submit most of the  
10 appeals that have been submitted in RLI bonds,  
11 right?

12 A That is correct.

13 Q And on how many occasions was Nexus  
14 prevented from submitting an appeal by anything  
15 that RLI did or did not do?

16 A An appeal?

17 Q Uh-huh.

18 A Your client issued a cease and desist  
19 request on appeals. We clarified that the appeals  
20 were being filed by the co-obligor. My  
21 understanding is that RLI has done nothing to  
22 prevent the co-obligor from filing appeals, which

194

1 we appreciate and he has done so. But I don't  
2 think we filed any appeals directly with RLI. I  
3 think they were all with Big Marco. I could be  
4 wrong about that, but I don't think so.

5 Q All right. So there's no specific  
6 instance that RLI prevented Nexus from submitting  
7 an appeal?

8 A Not an appeal. Dispute's a different  
9 question.

10 Q Okay. So on how many occasions did RLI  
11 prevent Nexus from submitting a dispute? Is that  
12 what your contention is?

13 A 47 that I'm aware of.

14 Q So 47?

15 A I believe it's 47.

16 Q And what are you defining as a dispute?  
17 47 times what did RLI fail to do?

18 A So Ms. Johnson requested permission  
19 from Mr. Sussman in approximately 47 cases. There  
20 might be a few more, might be a few less. But  
21 there were approximately 47 cases where we had  
22 asked for permission to contest the reasoning for

1 the breach with the bond unit officer and in each  
2 of those instances we were denied.

3 At the culmination of that, we stopped  
4 requesting because it was clear that there was no  
5 circumstance or accommodation of circumstances  
6 that would compel RLI to actually give us this  
7 right or authority.

8 Q Are there 47 separate requests?

9 A I believe it was made in several  
10 emails, one of which includes 20 or 30 specific  
11 documents related to individual program  
12 participants. I think you have to add them up  
13 over the multiple emails.

14 Q Okay. All right. What kind of  
15 documents were included for these appeals?

16 A As I remember –

17 Q For the disputes. Let me call them  
18 disputes.

19 A Right. As I remember based on my  
20 recollection of reviewing the documents, it varies  
21 depending on the client because there are  
22 different documents that would be – that would

196

1 matter. I think there were some documents that  
2 indicated that individuals were still in  
3 proceedings. I think there were some documents  
4 that indicated that an individual had gone to the  
5 wrong – to the wrong court but had been -- or  
6 wrong ICE office but had been told that they could  
7 go to this different ICE office. They went there,  
8 they signed in, they did their meeting and they  
9 still got breached. So, just giving you an – my  
10 memory, Vivian, but it's basically like several  
11 different situations with different scenarios.

12 Q But all of these instances -- hold  
13 on -- all of these instances are this "dispute"  
14 that you talked about, this kind of interim  
15 dispute of providing a dispute to the bond unit  
16 officer?

17 A That's correct. These are the  
18 intermediary disputes. These are disputes when a  
19 breach initially occurs.

20 Q And so these are pre-invoice disputes?

21 A That is correct.

22 Q What about post-invoice disputes? Are

Transcript of Micheal Paul Donovan, Corporate Designee

50 (197 to 200)

Conducted on March 3, 2020

197

199

1 there any occasions that Nexus was prevented from  
 2 submitting a post-invoice dispute by anything that  
 3 RLI did or did not do?

4 **A Yes. RLI has demanded payment on**  
 5 **invoices where we believe we had post-invoice**  
 6 **disputes. However, Nexus paid them pursuant to**  
 7 **our responsibilities. So you were paid for those.**  
 8 **Those are bonds that we would have liked to have**  
 9 **had an opportunity to dispute. Many of them we**  
 10 **would have liked to have had an opportunity to**  
 11 **dispute pre-invoice, right?**

12 Q Let's just try to talk about --

13 **A I just want to make sure we get there.**

14 Q No, I know. I just want to kind of  
 15 keep them in buckets a little bit so I can address  
 16 them.

17 But as far as the post-invoice disputes  
 18 you're not contending here that Nexus -- excuse  
 19 me -- that RLI did something that prevented you  
 20 from submitting an appeal or a dispute  
 21 post-invoice?

22 **A To the extent that RLI may have paid an**

1 of any more than just the one?

2 **A Right. But I'm going to do a little**  
 3 **research on my break and make sure I give you a**  
 4 **full list if I have it.**

5 Q So with regard to the -- with regard to  
 6 these 47 disputes, pre-invoice disputes, can you  
 7 give me any and all facts and circumstances that  
 8 you were aware of?

9 You talked about a couple of emails.

10 Do you know when they were?

11 **A So I could --**

12 Q Who --

13 **A So I could cite you to Juliana's emails**  
 14 **which I think you guys have because they were to**  
 15 **our assessment so you would have them as we would.**

16 And I don't unfortunately have a  
 17 photographic memory so I can't recount those but I  
 18 will produce those emails for you if you want a  
 19 subsequent production, even though I think you  
 20 already have them.

21 Q No, I'm trying to get an idea of what  
 22 you know today. So sitting here, do you have an

200

1 **invoice that was on appeal when we had shown RLI**  
 2 **that it was on appeal, that's the only caveat I'm**  
 3 **going to say I don't know. I mean, we have had**  
 4 **conversations about bonds that were on appeal,**  
 5 **where the government didn't cancel the invoice.**  
 6 We've had conversations about this so I know  
 7 you're aware of that. And you know, those are the  
 8 only instances where I'm not sure, right?

9 Q But otherwise, just so I'm clear,  
 10 otherwise there are no other post-invoice disputes  
 11 that Nexus was prevented from submitting by  
 12 anything that RLI did or did not do?

13 **A Other than the ones that RLI may have**  
 14 **paid and foreclosed the appeal, that's right.**  
 15 Otherwise, no.

16 Q Okay. And sitting here today, can you  
 17 list or identify any specific one that RLI paid  
 18 while there was an appeal? Is that your  
 19 contention?

20 **A Yeah, I will get that name for you by**  
 21 **the end of the day. I do have at least one.**

22 Q Okay. And right now you're not aware

1 understanding of how many emails were issued and  
 2 when?

3 **A I've read -- I've reviewed between six**  
 4 **and seven emails. There may have been more that I**  
 5 **wasn't copied on. These are emails that I was**  
 6 **copied on.**

7 Q Okay. And do you know the time frame?

8 **A I believe the time frame existed**  
 9 **between late 2016 to the middle of 2018 -- let**  
 10 **me -- hold on one second. Let me just -- let me**  
 11 **just -- when we're talking about a window that**  
 12 **big, it sounds like a bad idea to speculate. So**  
 13 **let me get exact.**

14 **So December 2017 through the middle of**  
 15 **2018.**

16 Q Okay. Is whatever you're reviewing on  
 17 your phone, does that give you all the dates of  
 18 the communications?

19 **A So I'm looking at this, and I will**  
 20 **produce -- I'm going to produce.**

21 **A John, I'm going to send to my counsel,**  
 22 **this email called disputes and phone conference**

Transcript of Micheal Paul Donovan, Corporate Designee

51 (201 to 204)

Conducted on March 3, 2020

201  
1 formally requested to Mr. Sussman. It provided  
2 the basis of the emails that contained the 47  
3 some-odd requests. This is sort of that initial  
4 request.

5 So I'll send this because it does have  
6 a lot of dates and it may be helpful.

7 Q Did Mr. Sussman advise that he would  
8 consider any disputes or appeals on a case-by-case  
9 basis if adequate documentation was provided?

10 A We were told that he would consider on  
11 a case-by-case basis. He was extremely consistent  
12 in his no.

13 Q Right. And Mr. Sussman was asking both  
14 for the grounds of the appeal and then the facts  
15 that supported those grounds, correct?

16 A I know that Mr. Sussman was having a  
17 conversation with an attorney about those — the  
18 attorney that was making those arguments. I don't  
19 know what questions he asked her.

20 Q You don't know through reviewing the  
21 emails that Mr. Sussman was asking for the grounds  
22 as well as the facts that supported the grounds

202  
1 for any appeals?

2 A I know that he had asked for the  
3 grounds and I know that that was provided. Any  
4 follow-up conversations they may have had I don't  
5 know about. But based on the emails I can  
6 certainly review that, yes.

7 Q And the emails that you reviewed, did  
8 the emails provide both the grounds for the appeal  
9 and the facts to substantiate those grounds for  
10 all 47 of the appeals?

11 A Can you repeat that, I'm sorry?

12 Q Of the emails that you reviewed, I  
13 think you said there were six or seven perhaps.

14 A Uh-huh.

15 Q Did those emails set forth the  
16 grounds --

17 A Some of the grounds.

18 Q -- for all 47 appeals and the facts  
19 that supported those grounds?

20 A So I was copied on some of those  
21 communications, not all of them. My understanding  
22 is that each of those -- each of those cases was

203  
1 explained based on what the issue was that we were  
2 attempting to resolve through the dispute process.  
3 I wasn't a party to any of those  
4 communications directly, so I'm only referencing  
5 based on my reviewing email communications. So I  
6 apologize I can't be more thorough.

7 Q Right.

8 A But my understanding is that -- that we  
9 provided an explanation and that we were told that  
10 we could not contest them.

11 Q Isn't it true that some of those emails  
12 only provided, for example, an example of an  
13 appeal, perhaps, but not setting forth any  
14 specific grounds for an RLI bond or the facts that  
15 supported an RLI bond appeal or dispute?

16 A Well, I'm aware of an email  
17 communication where Mr. Sussman requested an  
18 appeal was -- received one and then -- I need to  
19 see that email to fully understand the  
20 communication that you're talking about. My  
21 understanding is that a sufficient basis for  
22 the -- the seeking to contest the bonds was

204  
1 provided.

2 Q You mean the grounds?

3 A Yes, that basis based upon the legal  
4 conclusions of the attorney that's filing the  
5 appeal, right? So I know that those  
6 communications happened. I wasn't a party to  
7 those communications, so I can't repeat them off  
8 the top of my head obviously.

9 Q Okay. And you can't say, sitting here,  
10 how many of those emails -- whether or not those  
11 emails set forth the grounds and the facts  
12 supporting the grounds for all 47 of these  
13 pre-invoice disputes?

14 A No, no, no. A case-by-case basis. I  
15 can say that I'm confident that we provided  
16 grounds and that I know that RLI never allowed us  
17 to contest not one. It's also important,  
18 Ms. Katsantonis, to understand that 47 is the  
19 number I think that I have identified. We would  
20 have sought to contest scores more, but  
21 unfortunately, you know, after being -- it being  
22 made clear that this was not something that was

Transcript of Micheal Paul Donovan, Corporate Designee

52 (205 to 208)

Conducted on March 3, 2020

205

207

1 ever going to be allowed, it really has impacted  
2 our ability to manage this book.

3 Q Why do you say -- can the co-obligor  
4 assert pre-invoice disputes?

5 A Unfortunately, no. They require a  
6 letter of authorization from the surety.

7 Q And where are you deriving that  
8 information, the requirement from? The DHS  
9 handbook?

10 A The DHS handbook and what they tell you  
11 when you seek. The DHS handbook says you can file  
12 disputes. It doesn't say you have to have a  
13 letter from the surety. But when you call the  
14 bond unit manager and say I'm filing a dispute he  
15 says send me the letter from the surety. So we  
16 know that the letter is required.

17 Q Does the DHS Handbook specifically  
18 provide a basis for filing pre-invoice disputes?

19 A It doesn't provide a specific basis.  
20 It gives an indication of what a dispute is.

21 Q Right?

22 A And there are certain aspects of a

1 on the testimony or evidence from the attorney  
2 Juliana?

3 A Yeah, as a 30(b)(6) witness, a lot of  
4 my testimony is based on information that I've  
5 been able to study and review in anticipation of  
6 this deposition.

7 Q Right. But Juliana, is she a Nexus  
8 employee?

9 A She is not. She's an attorney. She  
10 operated with us via contract.

11 Q What's her law firm?

12 A Function via contract. McNutt Law, I  
13 think it's called.

14 MR. SHOREMAN: For the record, the  
15 documents that are -- the emails that the witness  
16 just discussed were produced via email to counsel  
17 for RLI.

18 Q With regard to an invoice -- so is one  
19 type of pre-invoice dispute to obtain a mitigation  
20 reduction?

21 A It can be.

22 Q Okay. And that would be for delivery

206

208

1 dispute that can be either pre-, like I'm talking  
2 about with the breach, or post-invoice.

3 Q And what documentation do you have that  
4 evidences that a pre-invoice dispute will only be  
5 accepted if a surety letter is provided?

6 A My own knowledge.

7 Q Based on what?

8 A Based on being denied the ability to do  
9 it because we did not have a letter from RLI  
10 granting same.

11 Q Okay. And where did -- who told you --  
12 do you have a written correspondence or do you  
13 have a verbal communication that said you could  
14 not file a pre-invoice dispute without a letter  
15 from RLI?

16 A I know we have a verbal communication.  
17 The letter I just forwarded to counsel to produce  
18 to you sets more fully out from Juliana what the  
19 communication with ICE was and what the needs are  
20 from -- from RLI to be able to substantiate the  
21 dispute. And I'll produce that to you.

22 Q All right. So your knowledge is based

1 within the 30 days?

2 A That's correct. Or within the second  
3 window because there are two windows where you can  
4 get mitigation at 66 percent and then again at  
5 33 percent.

6 Q And didn't some of RLI invoices get  
7 mitigated?

8 A Oh, sure.

9 Q And RLI assisted with that process?

10 A Well, in those instances we had -- so  
11 understand in those instances you've got an  
12 individual who is a notice to deliver, right?  
13 They don't come in. And then in between the  
14 notice to deliver and the breach they go in, okay?  
15 So the ICE officer is acutely aware that they're  
16 there. So that kind of dispute's pretty easy. We  
17 don't really need RLI to help us with that because  
18 the immigrant's literally in front of the bond  
19 unit officer saying, hey, I'm here. And so  
20 typically those will get mitigated based on the  
21 fact that the person is there and that the  
22 calendar is what the calendar is, you know.

Transcript of Micheal Paul Donovan, Corporate Designee

53 (209 to 212)

Conducted on March 3, 2020

209

211

1 Q Hasn't RLI make -- didn't RLI make  
2 phone calls on behalf of Nexus in order to  
3 mitigate bonds?

4 A It's entirely possible that calls were  
5 made in those circumstances. I'm not aware of  
6 them but I certainly would appreciate if they did  
7 and would expect it.

8 Q Right?

9 A So that would make sense.

10 Q So it wouldn't be a fair statement to  
11 say that RLI never assisted Nexus in pre-invoice  
12 disputes?

13 A I think it – I actually do think that  
14 it is accurate to say that RLI has never assisted  
15 Nexus in pre-invoice disputes understanding that  
16 what I'm talking about are not mitigation issues  
17 based on when a person came in or was produced.  
18 We're talking about – and I think I testified to  
19 this pretty specifically. We're talking about  
20 instances where there has been a mistake. The  
21 person's case is continuing, but there's some kind  
22 of faulty breach or a faulty notice.

210

212

1 Q So you're saying that there's no  
2 instances with RLI?

3 A I'm sorry?

4 Q I'm sorry. I did interrupt you and I  
5 apologize.

6 A No, it's our thing. I understand.

7 Q Are you saying there's no notices where  
8 RLI assisted in those cases?

9 A I'm not suggesting that RLI didn't  
10 assist by making phone calls in those cases. I'm  
11 suggesting that RLI didn't assist in the specific  
12 subset of cases where we needed to show that a  
13 person didn't – you know, didn't miss or is  
14 continuing to go to court or whatever. In those  
15 instances where we've asked RLI, look there's a  
16 breach, the breach is wrong, we want to seek a  
17 reconsideration with the bond unit officer, we've  
18 been denied letters in those cases. That's – and  
19 consistently to the extent that RLI may have made  
20 calls about mitigation breaches, well that's great  
21 and I appreciate that but it's different than what  
22 I'm talking about.

1 Q So you're saying -- it's your testimony  
2 that there are instances where you provided RLI  
3 with specific information about an immigrant to  
4 show that the immigrant was complying with their  
5 bond obligations but RLI just ignored it?

6 A Yes.

7 Q And can you tell me specifically what  
8 those instances were?

9 A I can't tell you specifically by  
10 client, but I will, again, produce the  
11 communications that were happening between Julianne  
12 and Ira Sussman and you can read it for yourself.

13 Q Okay. So the basis of the statement  
14 you're making is based on the emails that you'll  
15 produce?

16 A The emails that -- that I will produce  
17 and communications I have had with Erik Schneider  
18 and any additional documentation that I will --  
19 that we have. In other words, I want to get you  
20 the global list of times that we have asked for  
21 it. So I know there's 47. I'll get you that.  
22 But if there's more, I'll get you that too.

1 That –

2 Q Did you have an understanding that --  
3 that under the terms of the indemnity agreement,  
4 RLI had the unilateral right to determine whether  
5 to appeal any claim?

6 A I believe under the indemnity agreement  
7 RLI has the unilateral right to determine RLI's  
8 appeal decisions. I believe that the co-obligor  
9 has independent rights of appeal just as he has  
10 joint and several liability.

11 Q With regard to invoices, by the terms  
12 of the invoice is payment due and payable upon its  
13 receipt?

14 A Upon the receipt of the invoice?

15 Q Uh-huh.

16 A Do you have a document that you want me  
17 to look at that you're talking about? I mean, I  
18 just want to make sure I know what you're talking  
19 about. Are you talking about any invoice? Are  
20 you talking about a specific invoice? Are you  
21 talking about a specific client or a specific  
22 case?

Transcript of Micheal Paul Donovan, Corporate Designee

54 (213 to 216)

Conducted on March 3, 2020

213

215

1 Q I'm just talking about invoices issued  
2 by DHS based on a bond breach.

3 A So an invoice, once a breach -- a  
4 breach occurs, there's a final determination of  
5 the breach, the appeal window eclipses. There's  
6 an invoice. At that point in time the invoice is  
7 due.

8 Now, we have, as a matter of function,  
9 had several invoices that were rescinded in that  
10 process because we've continued to seek relief for  
11 the client or the client perhaps has a motion to  
12 reopen or something like that that comes through  
13 during that dependency at that time. A lot of  
14 times when we're waiting for that 120th day when  
15 we have an invoice, it's because we know that that  
16 client has a motion to reopen.

17 Q But that's not what the invoice says on  
18 its face, right? Doesn't the invoice on its face  
19 say that it is due and payable on receipt?

20 A Sure. And I have a duty to either  
21 indemnify you or exonerate you, right? I  
22 indemnify you. You could pay something and then I

214  
1 would pay it back, or I pay for you. We pay for  
2 you. Every single time a breach comes up and  
3 there's an invoice issued, we pay it.

4 Q Well, you don't --

5 A Every single time.

6 Q Well, you don't pay it on its due date,  
7 right? The invoice by its face say it's due and  
8 payable on receipt, right?

9 A I understand that.

10 Q Do you want to see that?

11 A No, I hear you. But we pay all of our  
12 invoices.

13 Q You don't pay them upon receipt.

14 A Point me to an invoice that's  
15 outstanding.

16 Q Mr. Donovan, we've been through  
17 extensive litigation, right?

18 A I know we have.

19 Q And we've had preliminary injunctions  
20 in order to require Nexus to pay, right?

21 A Which is -- which is really unfortunate  
22 because again --

1 Q Okay -- but.

2 A -- because again I think the court  
3 has -- it will be interesting to see what the  
4 court considers when they see RLI's behavior,  
5 right? I think that's going to be important.

6 Q And RLI's behavior with regard to what?

7 A With regard, for example, to the bond  
8 that we raised on Friday where you show that it  
9 was canceled in the production that you made to us  
10 in discovery but we paid it. You accepted our  
11 check, you cashed it and you never refunded it and  
12 then you send us back an email saying no, we  
13 really did pay it. Well, did you pay it or is it  
14 canceled. Your records say it was canceled. I  
15 don't have the cancellation.

16 Q Did you produce to RLI records to  
17 support your contention?

18 A RLI receives the records and produces  
19 them to us.

20 Q Is that a no? You have not produced to  
21 RLI --

22 A I have asked you for the cancellation.

216

1 Q Didn't RLI provide you with  
2 documentation in response to your question  
3 yesterday?

4 A Not the cancellation or an explanation  
5 of why that bond was listed canceled?

6 Q Mr. Donovan, did --

7 A You're interrupting me.

8 Q That's okay. I don't care.

9 Let's just mark this.

10 (Donovan Exhibit 10 marked for  
11 identification and attached to the transcript.)

12 Q Okay. This is a copy of an invoice  
13 receipt for bond breach; is that correct?

14 MR. SHOREMAN: 10. Do I have 10?

15 MS. KATSANTONIS: Did you get a copy?

16 MR. SHOREMAN: No.

17 A I think that's correct.

18 Q And is this consistent with all of the  
19 invoices typically received for bond breaches?

20 A No.

21 Q This is not a typical invoice?

22 A Well, all the invoices are different.

Transcript of Micheal Paul Donovan, Corporate Designee

55 (217 to 220)

Conducted on March 3, 2020

217

219

1 The dollars amounts will be different, the names  
2 would be different, all that.

3 Q I mean the form.

4 A Yes, the form would be the same.

5 Q Okay. So with regard to the form,  
6 looking at the second page, payment due, doesn't  
7 the invoice provide that the bill is due and  
8 payable on receipt?

9 A No. It says 15 October 2016.

10 Q I'm looking at the second page, payment  
11 due. Important information regarding this  
12 invoice.

13 A All right. But it also has a due date.

14 Q Right. I'm looking at the terms on  
15 important information regarding this invoice.

16 A Right, but I'm looking at the actual  
17 invoice and it has a due date on it.

18 Q Okay. Let's look at the second page.

19 A All right, but do you see the due date  
20 on the invoice, there's a due date on the invoice.

21 Q There's an explanation here --

22 A On the second page there is a list of

218 1 terms.

2 Q Right. And it explains those terms,  
3 right?

4 A But what I will say is that this is –  
5 this is very specific. This is a due date on the  
6 invoice and this is a general provision, right?  
7 Like specific general. This says that there's a  
8 due date. So there's an invoice date of 15th  
9 September and a due date of 15th October.

10 Q Okay. That's great. Now looking at  
11 the next page?

12 A Uh-huh.

13 Q With regard to important information  
14 regarding this invoice, looking at payment due.  
15 Doesn't the invoice provide that the bill is due  
16 and payable on receipt, correct?

17 MR. SHOREMAN: No, it doesn't.

18 A It also says failure to submit the  
19 amount shown –

20 MR. SHOREMAN: Why are you only reading  
21 the first sentence?

22 A Failure to submit the amount shown on

1 the reverse side within the time specified on the  
2 invoice will result in additional charges.

3 Ms. Katsantonis, the line you're

4 quoting literally says follow the date from the  
5 invoice. And if you look at the invoice,  
6 Ms. Katsantonis, there is a date of issuance on  
7 the invoice and a due date on the invoice. And  
8 they're not the same date.

9 Q Isn't the payment terms saying that  
10 penalties will be due if you don't pay within the  
11 30 days but that the bill is due and payable upon  
12 receipt?

13 MR. SHOREMAN: The document speaks for  
14 itself.

15 A Yeah, I think it very clearly says that  
16 you're supposed to comply with the dates on the  
17 invoice.

18 Q Well, you don't contest that the  
19 invoice says the bill is due and payable on  
20 receipt, right? That language is right there,  
21 first line?

22 MR. SHOREMAN: Ms. Katsantonis.

218 219 1 Q Is that correct?

2 MR. SHOREMAN: It speaks. We do  
3 contest that because the following sentence says  
4 it must be paid within the due date specified on  
5 the invoice.

6 MS. KATSANTONIS: Mr. Shoreman.

7 MR. SHOREMAN: Why are we arguing about  
8 something as silly as this?

9 MS. KATSANTONIS: Mr. Shoreman, let's  
10 get Mr. Donovan's testimony because your testimony  
11 isn't even accurate.

12 MR. SHOREMAN: I apologize, but it is  
13 so obvious that a cat could testify to it.

14 THE WITNESS: A cat? The cat thing was  
15 funny. I'm sorry. Just thinking like a meow or  
16 something, I don't know. Weird.

17 Q So you agree, Mr. Donovan, the first  
18 sentence says that the bill is due on receipt,  
19 right?

20 A I would agree that the first sentence  
21 says this bill is due and payable on receipt.

22 Q Right. And that the second sentence

Transcript of Micheal Paul Donovan, Corporate Designee

56 (221 to 224)

Conducted on March 3, 2020

221

1 says failure to submit the amount shown within the  
2 time specified on the invoice will result in  
3 additional charges?

4 **A Yes, I see that.**

5 Q Okay. So did you understand that if  
6 you didn't pay within 30 days, additional charges  
7 would be assessed?

8 **A Right, see I think this is part of the  
9 confusion though, Ms. Katsantonis, because like  
10 what it's saying is that this bill is due and  
11 payable upon receipt.**

12 Q All right.

13 **A This is important and it may help edify  
14 you to certain aspects of your case.**

15 The breach is not payable upon receipt,  
16 right? As we have articulated, a breach doesn't  
17 become due and payable until it's a final claim,  
18 right? So what this invoice --

19 Q That's --

20 **A I'm sorry. No, I really want you to  
21 understand because if you listen to me you're  
22 going to understand this. This says that now you**

223  
1 program, is a threat if an invoice isn't paid and  
2 it's one of the reasons why we're proud to pay our  
3 invoices every single time.

4 Q Well, you don't pay your invoices on  
5 the date you receive an invoice, right?

6 **A No, we do not.**

7 Q And you don't pay an invoice within 30  
8 days of receipt, do you?

9 **A Not always.**

10 Q Most of time you don't, right?

11 **A Not always.**

12 Q Well, what does "not always" mean? Do  
13 you always pay them within 30 days?

14 **A I don't know. This is not -- I mean,  
15 we don't have, as I told you, we don't track when  
16 we pay them as long as we pay them when they are  
17 ultimately due.**

18 Q Well, isn't --

19 **A As you have articulated, and I don't  
20 mean to raise my voice, Ms. Katsantonis, I just  
21 want to make sure I get a chance to finish my  
22 answer.**

222

1 can pay this. Because when it was a breach you  
2 couldn't pay it, right, until it's an invoice you  
3 can't pay it. So it's saying you can pay it but  
4 you must pay it by the due date. That's what it  
5 says.

6 MR. SHOREMAN: Meow.

7 Q And so you're not --

8 THE WITNESS: The meow thing is just  
9 hilarious. Cats are such weird creatures anyway.

10 MR. SHOREMAN: I love cats.

11 THE WITNESS: I've always been a dog  
12 person myself.

13 MR. SHOREMAN: I don't even own a dog.

14 THE WITNESS: Cats always feel like you  
15 don't really -- you don't really own a cat, the  
16 cat kind of owns you.

17 Q You understood, Mr. Donovan, Nexus  
18 understood that the consequences of a failure to  
19 pay could result in, among other things, the  
20 referral of the bonding company, the Department of  
21 Treasury or the Department of Justice?

22 **A I understand the Treasury, that offset**

224  
1 As you have indicated, we have been  
2 under injunctive relief orders in this case,  
3 right?

4 Q It's --

5 **A But we have made those payments and we  
6 will continue to make payments as we are required.**

7 Q Mr. Donovan, doesn't the invoice on its  
8 face say when it's due.

9 **A I think on the invoice has a due date,  
10 yes.**

11 Q Right. And when you talk about when an  
12 invoice is due, you're creating a different due  
13 date than what's on the invoice, right?

14 **A I'm talking about the referral to  
15 Treasury which has been a focus of your client in  
16 litigation.**

17 Q No, when you say when an invoice is  
18 due, right, you're creating a due date that's  
19 different than what's on the face of this  
20 document, right?

21 **A I think I'm referring to the date set  
22 by the order of preliminary injunction. I think**

Transcript of Micheal Paul Donovan, Corporate Designee

57 (225 to 228)

Conducted on March 3, 2020

225

227

1 that may be our confusion. So we have an order  
2 for preliminary injunction --

3 Q Wait a minute?

4 A Ms. Katsantonis, but you're  
5 interrupting me. We have an order for preliminary  
6 injunction in this case that says we have to make  
7 payments by the 120th day.

8 Q I'm not talking about the preliminary  
9 injunction.

10 A Well, I am, ma'am. With all due  
11 respect and you're continuing to interrupt me. We

12 have an order from a chief judge in a federal  
13 district that says this is what it is. So when I  
14 refer to that, that's what I'm talking about.

15 Q When do you believe an invoice is due  
16 not with regard to this case and the order of  
17 injunction. What is your understanding of when an  
18 invoice is due that's been issued by the  
19 Department of Homeland Security?

20 A Barring -- yeah, it would be on the due  
21 date of the invoice. It's rather straightforward.  
22 It's on the front of the invoice.

1 so that their bond breach can be canceled and they  
2 can continue on. There are many, many, incidents  
3 where our risk management folks are active --  
4 Ms. Katsantonis it's really important for you to  
5 understand that even today, right now as we're  
6 talking, we have dozens of risk management  
7 professionals in the field working with Libre  
8 program participants. This is a -- it is a  
9 significant undertaking. And we focus on getting  
10 these people to meet and fulfill their  
11 obligations.

12 Q Didn't you have to get a payment  
13 schedule with the Department of Homeland Security  
14 because you couldn't make your payments, not even  
15 on the due date, but months later?

16 A [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 Q [REDACTED]  
21 with the [REDACTED]  
22 A We are not.

226

228

1 Q Okay. So your understanding is that an  
2 invoice is due within 30 days or on the due date?

3 A On the due date of the invoice, right.

4 Q Okay. And how many bonds have you paid  
5 on the due date of an invoice?

6 A We do -- I don't have that total  
7 number, and it's not something that we keep track  
8 of. In other words, it's not -- it's not a KPI  
9 that we track, whether it was paid on that date,  
10 before that date or after that date.

11 Q Can you estimate how many of the bonds  
12 that you've paid have you paid on the -- what's  
13 your definition of the due date on the face of the  
14 invoice?

15 A I can estimate but not under oath  
16 because --

17 Q Well, how many do you think?

18 A -- that's an estimation I couldn't  
19 possibly be swearing to it. I would say maybe  
20 half. I think in more than half. Half or more  
21 than half the cases we have worked in that invoice  
22 period to try to get either relief for the client

1 Q Okay. And isn't it true that most of  
2 the bond payments that you've made over the last,  
3 let's start with year, have been at or around 120  
4 days after an invoice was issued?

5 A It's certainly true with RLI bonds,  
6 yes. I don't know the -- I'm going to have to  
7 look at the number, but I would say that more  
8 often than not we err on the side of caution to  
9 try to bring the person into compliance before we  
10 pay the bond and ultimately abridge their rights.

11 Q And the same thing with 2019?

12 A I would say that's true, sure.

13 Q And what about 2018? Same?

14 A I think so. You have to understand,  
15 Ms. Katsantonis, we focus on helping the  
16 individual and helping the individual means trying  
17 to bring them out of the shadows and into  
18 compliance. So we're going to take whatever time  
19 we can to be able to do that.

20 Q So then your estimate would be  
21 inaccurate that it's not maybe half of the bonds  
22 that you've paid within 30 days, right?

Transcript of Micheal Paul Donovan, Corporate Designee

58 (229 to 232)

Conducted on March 3, 2020

229

231

1   A No, I don't think so because I think  
 2 historically it was probably more likely that we  
 3 were paying earlier before. So what we have seen  
 4 is a larger number of breaches, a larger number of  
 5 people that are being breached for inappropriate  
 6 reasons, a larger number of rescinding breaches.  
 7 And that's just a reflection of the federal  
 8 government's hyperactive approach toward  
 9 deportation.

10   Q Well, what year was it that you entered  
 11 into the payment schedule with DHS?

12   A I believe it was 2017.

13   Q Right. So in 2017 you weren't paying  
 14 within 30 days.

15   A In 2017 was the -- was a full year into  
 16 the Trump administration and into the issues  
 17 involving the extrapolation of increased incorrect  
 18 breaches. So I would say yeah we were dealing  
 19 with that 2016, 2017. But in 2014, 2015, we  
 20 weren't.

21   Q Okay. So for 2017, '18, and '19 it's  
 22 true that for most bond breaches you were not

1   A I believe we were on a repayment  
 2 schedule for a year but I'm not a hundred percent  
 3 sure. So again I would have to review documents  
 4 to answer that question, Ms. Katsantonis.

5   Q All right. And at 30,000 a day, even  
 6 at five days a week, it would be 150,000 a week,  
 7 at least 600,000 a month, and over 7 million in a  
 8 year, is that correct?

9   A Yeah. And we're still here paying our  
 10 obligations. Kind of makes the underlying  
 11 complaint seem silly, right?

12   Q All right. So in 2018 at least on this  
 13 payment schedule you probably paid over 7 million  
 14 in bonds breach payments?

15   A We've paid over \$11 million in bond  
 16 breach payments, Ms. Katsantonis, so that does  
 17 sound consistent.

18   Q Okay. And with regard to the invoice,  
 19 with regard to disputes, the invoice provides  
 20 unless a written request disputing the debt is  
 21 sent to the office indicated above within 30 days  
 22 of receipt of the invoice, the debt will be

230

232

1   paying within 30 days, correct?

2   A That's right. In the -- what I would  
 3 call the era of Donald Trump, we have tried to  
 4 give people as many opportunities as possible to  
 5 make things right and I'm happy to report many  
 6 people are able to do that. There are lives that  
 7 we've saved as a result of that.

8   Q In 2018, starting in March, you were  
 9 paying approximately 30,000 a day in late bond  
 10 breach payments on a repayment schedule with ICE;  
 11 is that correct?

12   A That's correct.

13   Q And for how many months did you  
 14 continue on this repayment schedule?

15   A I'd have to review the documents.

16   Q You don't know how long you were on --

17   A I don't remember. I don't know how,  
 18 without reviewing documents I'm happy to review  
 19 documents, but I would have to review documents to  
 20 determine that.

21   Q Were you on a repayment schedule for at  
 22 least a year?

1   considered valid and due in full; is that correct?

2   A That's correct. I believe that is the  
 3 representation.

4   Q And in fact the --

5         MR. WILLIAMS: Are we taking a break?

6         MS. KATSANTONIS: No.

7         MR. SHOREMAN: No, we're still on.

8   Q So how many written disputes has Nexus  
 9 submitted in writing to DHS within 30 days of the  
 10 invoice date for Nexus bonds? And when I say  
 11 Nexus bonds --

12   A Global, right?

13   Q Yeah. When I say Nexus bonds, just to  
 14 be clear on the record, we're talking about bonds  
 15 for which Nexus --

16   A Secured.

17   Q Yep.

18   A Got it. You and I are speaking the  
 19 same language in that regard, Ms. Katsantonis, and  
 20 I will get that for you, okay? I will add that to  
 21 my bucket list of break items.

22   Q And then the same for RLI bonds as a

Transcript of Micheal Paul Donovan, Corporate Designee

59 (233 to 236)

Conducted on March 3, 2020

	233		235
1	subset of that.	1	of what you need?
2	<b>A Right. I'm accumulating a lot of break</b>	2	<b>A Yes. You let me know when you want me</b>
3	<b>work. We're going to have to start thinking about</b>	3	<b>to go. Once you feel like you're at a good place,</b>
4	<b>taking that break at some point so I can get you</b>	4	<b>then we'll break and I'll get this stuff for you,</b>
5	<b>these answers.</b>	5	<b>Ms. Katsantonis, okay?</b>
6	Q All right. I've got a couple more	6	Q Sure. Thank you.
7	questions here on the disputes.	7	<b>A You're welcome.</b>
8	<b>A It's your deposition, Ms. Katsantonis.</b>	8	Q You state in paragraph 42 of your
9	Q How many RLI bond breach invoices has	9	amended complaint that the purpose of an
10	DHS reduced due to delivery of a bond principal	10	immigration bond is to secure the principal's
11	within 30, 60, or 90 days of delivery date set	11	guarantee that he or she will appear for all
12	forth in the notice to deliver?	12	hearings and meetings that are required by the
13	<b>A Universal?</b>	13	14 United States so that he or she can be released
14	Q Let's do RLI bond breaches.	14	from U.S. Government custody and detention during
15	<b>A Okay. I'm going to get both just</b>	15	16 the year's long immigration process. Is that an
16	<b>because I know you're going to ask me and I'll get</b>	16	17 accurate statement?
17	<b>that at the break as well. I'll review documents</b>	17	<b>A That's correct. The immigrant does</b>
18	<b>that should be able to answer that question.</b>	18	<b>have to appear for meetings and hearings, et</b>
19	Q And then along the same lines, how many	19	<b>cetera, as dictated by the Department of Homeland</b>
20	RLI bond breach --	20	<b>Security and the Department of Justice.</b>
21	<b>A You're just giving me homework now,</b>	21	Q And you agree that's the purpose of the
22	<b>aren't you?</b>	22	23 bond is to secure the principal's guarantee?
	234		236
1	Q These are the questions we wanted to	1	<b>A Vis-à-vis the immigrant, yes,</b>
2	ask. I think it's in the notice.	2	<b>absolutely. The whole purpose of the bond is to</b>
3	How many RLI bond breach invoices has	3	<b>ensure that they appear vis-à-vis the indemnitor</b>
4	DHS reduced for any other reason, rather than just	4	<b>and the obligors, it's appear or pay, right? I</b>
5	delivery of the person?	5	<b>mean, they either appear or they pay. In other</b>
6	<b>A And that doesn't -- you're not talking</b>	6	<b>words, the immigrant doesn't owe the United States</b>
7	<b>about reduced to zero, you're talking about</b>	7	<b>Government \$20,000 if the bond was posted by a</b>
8	<b>partially reduced, right?</b>	8	<b>surety, right? So they're going to collect that</b>
9	Q Right. Any form of mitigation.	9	<b>money from the surety and issue a warrant for the</b>
10	<b>A I'm pretty sure that's a zero, but I'll</b>	10	<b>immigrant. The immigrant's focus is to appear;</b>
11	<b>find out for you.</b>	11	<b>the surety's focus is to pay if they don't appear.</b>
12	THE VIDEOGRAPHER: Where you have your	12	Q If an immigrant's not using Nexus'
13	phone, can you move it?	13	services, can't they post a hundred percent of the
14	THE WITNESS: For sure, yeah. Is that	14	bond amount?
15	enough?	15	<b>A They can. They can post it in real --</b>
16	THE VIDEOGRAPHER: That's good.	16	<b>real assets to the United States.</b>
17	MR. WILLIAMS: 3 hours and 38 minutes.	17	Q Right. But they're still required to
18	MS. KATSANTONIS: How many?	18	appear and go to their hearings, correct?
19	MR. WILLIAMS: 3 hours and 38 minutes.	19	<b>A Well, so no. An immigrant in detention</b>
20	<b>A We're more than halfway done. Unless</b>	20	<b>is never going to pay their bond in cash, for what</b>
21	<b>you cut early then we're more than halfway done.</b>	21	<b>are obvious reasons. They're going to have a</b>
22	MR. SHOREMAN: Okay. You've got a list	22	<b>third-party surety.</b>

Transcript of Micheal Paul Donovan, Corporate Designee

60 (237 to 240)

Conducted on March 3, 2020

237

239

1 Q I'm talking about doesn't the law  
 2 require, isn't it that an immigrant can post funds  
 3 for a full amount of its bond or some sort of  
 4 security, for full amount of its bond, and they're  
 5 still required to appear for their hearings,  
 6 right?

7 A Well, his or her. I don't want to use  
 8 the word it.

9 Q Sorry. Did I say?

10 A I know you didn't intend that. You  
 11 threw me off with the it. I'm like, what's she  
 12 saying. Can you repeat the question, Vivian, I'm  
 13 so sorry. I was so offended I was like what are  
 14 you talking about.

15 Q John got me so distracted about cat  
 16 talk. I thought he was a dog person but now I'm  
 17 very distracted.

18 A I just want to point out instead of  
 19 responding really nasty and getting offended, I  
 20 gut-checked myself and asked first so.

21 I will appreciate that, you weren't  
 22 mean about it.

238

240

1 Q Isn't it true that an immigrant without  
 2 using Nexus' Services, separate and apart, they  
 3 can post their bond and be released from detention  
 4 but they're still obligated to make their  
 5 appearance as required?

6 A Well, they're obligated to make their  
 7 appearances if they're released on bond but no, an  
 8 immigrant in detention can't post his own bond.

9 Q But the family member could post a  
 10 bond, let's say.

11 A A family member standing a surety can  
 12 post bond for sure.

13 Q So, if a family member posts the bond  
 14 and pays the full penal sum, the immigrant is  
 15 still required to make its appearances as required  
 16 by the government, right?

17 A Right. And that family member standing  
 18 a surety either has to ensure they go or pay. The  
 19 family member is never going to be locked up  
 20 because they go or thrown in jail because they  
 21 didn't go. They're either going to have to pay  
 22 or – the immigrant goes to court or they pay.

1 Q They don't pay, they just forfeit the  
 2 funds that they provided to the court.

3 A Isn't that the same difference?

4 Q Well, I'm just saying those funds are  
 5 forfeited but the immigrant still has to appear?

6 A Well, sure. Just like in a surety bond  
 7 situation.

8 Q Sure?

9 A The immigrant would ultimately be  
 10 subject to arrest. But Ms. Katsantonis, your  
 11 obligations would end upon the payment of that  
 12 bond, just like the third-party surety mom,  
 13 brother, dad, co-worker is going to also – their  
 14 obligations are going to end when they pay that  
 15 bond.

16 Q How many -- do you -- did you monitor,  
 17 at one point in time each and every RLI bond  
 18 principal?

19 A No. I don't think that we've – well,  
 20 can you define what you mean by "monitoring"?

21 Q GPS monitoring.

22 A No, I don't believe that we've ever

1 monitored all of our RLIs.

2 Q How many of RLI -- yeah, how many of  
 3 RLI bond principals were not fitted with a GPS  
 4 device?

5 A It would be anyone that had a bond less  
 6 than \$5,000 initially. That amount has raised to  
 7 \$10,000. But during the life of the RLI program,  
 8 I believe it would be individuals whose bonds were  
 9 of a penal value of less than \$5,000.

10 Q Okay. And --

11 A And I can certainly get you the number  
 12 of those bonds but I don't have it off the top of  
 13 my head.

14 Q Is every bond principal that gets  
 15 fitted for a GPS, are they actually monitored as  
 16 far as through the GPS?

17 A So we do different types of monitoring,  
 18 depending on, you know, the issue with the client.  
 19 So any client that's affixed with a GPS device  
 20 does have monitoring that's conducted, meaning  
 21 they always establish a point when the individual  
 22 is affixed with the device so that we can ensure

Transcript of Micheal Paul Donovan, Corporate Designee

61 (241 to 244)

Conducted on March 3, 2020

241

243

1 that the GPS device is actually working.

2 Q Uh-huh?

3 A But you have to understand --

4 Q But --

5 A -- that the GPS is not what makes our  
6 program successful.

7 Q I know that and I've heard.

8 A It isn't a hugely important part of the  
9 program.

10 Q That's fine. I want to -- and I  
11 understand all of your -- Nexus' with the program  
12 and the services are all about.

13 A I wish.

14 Q So?

15 A I wish that were true. I think if you  
16 did understand them you'd be a huge fan, Vivian.

17 Q I do.

18 A I do that -- I mean that.

19 Q I've never said I'm not.

20 A Well, you're suing me so you're  
21 obviously not that huge a fan.

22 Q My client is in litigation with you.

1 A Any person who had a device affixed to  
2 them would have had tracking data at some point  
3 for some period of time, absolutely.

4 Q How much --

5 A But it's important to understand that  
6 we are not -- we're not monitoring sex offenders  
7 on bracelets here. It's not as if we're watching  
8 to see if people go near school zones or  
9 something. This is a completely different kind of  
10 situation. So, you know, the reality is that most  
11 of the conditions on a bond are very specific to  
12 showing up, right? So it's -- we utilize the GPS  
13 as a function of helping clients become stable and  
14 secure..

15 Q Well, let me ask you this.

16 A Because stability and security is what  
17 ultimately leads to compliance.

18 Q Let me ask you this: When you have a  
19 notice to deliver, how many of the RLI bond  
20 principals did you have on GPS monitoring when you  
21 received a notice to deliver for them?

22 A I don't know that I would have records

242

244

1 A I understand.

2 Q So with regard to GPSs?

3 A Yes.

4 Q My question is, is with the RLI bond  
5 principal who's actually been fitted with a GPS,  
6 how many of those bond principals are actually  
7 monitored, and I don't mean monitored with we're  
8 calling you to see how you're doing, but I mean  
9 that the GPS tracking device is being used to  
10 identify the locational -- the location of the  
11 principal?

12 A Well, they all would have been when the  
13 device was installed, or at some point upon  
14 wearing the device. So if your question is how  
15 many --

16 Q Not at the moment it's installed. But  
17 I'm talking about did you monitor them through GPS  
18 tracking?

19 A What do you mean monitor them?

20 Q Did you have a service or did you and  
21 your office actually -- could, you know, track the  
22 whereabouts of these principals?

1 of that. I don't know that those records exist.  
2 In other words, I'm thinking now of what I would  
3 review to answer that question. And the -- so can  
4 you repeat it?

5 Q How many of the RLI bond principals  
6 were you -- did you have GPS monitoring on when  
7 you received a notice to deliver?

8 A The problem is the historical nature of  
9 this. So I don't -- we didn't -- when we got  
10 notices to deliver, we never documented whether  
11 the person was on tracking or wasn't on tracking.  
12 In other words, it's not like that's something  
13 that we kept track of. So I just don't know  
14 that --

15 Q So a notice to deliver?

16 A -- I would be able to give you a  
17 snapshot in time but I'm not sure if I can get  
18 that information. Maybe I can. I'm just not  
19 thinking about it. I'm not clear.

20 Q So it's not part of your practice to  
21 receive a notice to deliver and then be able to  
22 check the location or whereabouts of that person

Transcript of Micheal Paul Donovan, Corporate Designee

62 (245 to 248)

Conducted on March 3, 2020

245

1 immediately based on a GPS monitoring?  
 2 A No, very typically by the time a notice  
 3 to deliver is issued in a case, they've been in  
 4 their immigration case for a year or so. Many of  
 5 those instances those people are not going to be  
 6 GPS monitored anymore. The average Nexus Program  
 7 participant is monitored for about eight months,  
 8 right? So what we would not do is look for an  
 9 active tracking point because typically by that  
 10 point we don't have active tracking points. What  
 11 we might look for is historical GPS data to  
 12 determine where the individual might be, not so  
 13 that we can roll up and arrest them, but so that  
 14 we can roll up and make contact with them and help  
 15 them understand why it would be important for them  
 16 to do the right thing.

17 Q When did Nexus implement a policy to  
 18 only track immigrants for about eight months?

19 A Well, eight months has always been our  
 20 average not our policy, right? We don't have a  
 21 policy that says we only track for eight months.  
 22 But it's very nature being an average there are

246 1 going to be some people that track long. So I  
 2 want to make sure that you understand that my  
 3 testimony is not that we only track for eight  
 4 months. The testimony is that on average it's  
 5 eight months. And, honestly, if you keep a GPS  
 6 tracking device on a person for an extended period  
 7 of time, it almost -- it's onerous and it's  
 8 unpleasant and, you know, we're attempting to  
 9 provide, you know, services where we can assist a  
 10 person in bringing them into community. You can't  
 11 bring people into community by making them lepers.

12 Q And as of January 2020, according to  
 13 records produced by Buddi, they advised that  
 14 approximately 90 RLI bond principals were on GPS;  
 15 is that accurate?

16 A That was accurate at the time.

17 Q Okay. So that's 90 out of the  
 18 outstanding, let's say, 1,700-plus bonds, right?

19 A Sure.

20 Q Okay. And do you know how many were on  
 21 GPS in 2019 or 2018?

22 A It would have been more, but, again, I

247 1 don't -- all I have is -- I have a snapshot in  
 2 time I can pull up and show what's on now. I  
 3 didn't keep track of that in a way that I can  
 4 report back.

5 Q Has Nexus reviewed whether or not  
 6 there's any correlation between those immigrants  
 7 not on GPS and those immigrants for whom a bond  
 8 breach is issued?

9 A Our analysis of our data indicates that  
 10 there is not a significant increase in the breach  
 11 rate for individuals who are not monitored by GPS  
 12 because they have a smaller bond. What I don't  
 13 know, Ms. Katsantonis, is whether that has  
 14 something to do with the fact that they have a  
 15 smaller bond and therefore less risk or whether it  
 16 just doesn't matter. What we have been able to  
 17 deduce from our experiences that the GPS doesn't  
 18 make that much of a difference. Where the GPS  
 19 makes a difference is, again, in stability. It's  
 20 in bringing the person out, and that's an  
 21 incredibly important time because they're trying  
 22 to find work, they're trying to figure out their

248 1 place in the world and a lot of these folks if  
 2 they're recent arrivals, they're just trying to  
 3 find their place, period.

4 Q Did you recently advise Buddi to cease  
 5 monitoring of RLI bonds principals?

6 A I did.

7 Q When did you do that?

8 A I did that in the beginning of  
 9 February, three weeks ago.

10 Q And why did you do that?

11 A I had -- when I discovered that we had  
 12 90 RLI principals on monitoring, I was horrified  
 13 that we had that many because our RLI program  
 14 ended in 2017 and it's 2020. So that's 90 people  
 15 who have seriously been on the bracelet longer  
 16 than the eight-month average. So in and of itself  
 17 that's a reason to bring those people off. More  
 18 importantly I have significant concerns over what  
 19 RLI might do with data that I have provided to it.  
 20 And I don't have any requirement under the general  
 21 indemnity agreement or the collateral agreement to  
 22 track those people via GPS. And so I made the

Transcript of Micheal Paul Donovan, Corporate Designee

63 (249 to 252)

Conducted on March 3, 2020

249

1 decision to remove that tracking considering the  
2 fact that these people have been on the program  
3 for more than three years and it's appropriate.

4 It's the appropriate thing to do.

5 Q Was cost a factor also?

6 A Was cost a factor?

7 Q Uh-huh?

8 A No. Their safety was a factor and my  
9 concern of what your client would do to them, that  
10 was the factor.

11 Q With regard to bond breaches we talked  
12 about earlier, if you recall our first preliminary  
13 injunction was in November 2018?

14 A I recall.

15 Q And at that point, RLI was asserting,  
16 amongst other things, that they had paid  
17 approximately 72,000 in invoices.

18 Do you recall that?

19 A I do remember that, yes.

20 Q And then since that hearing, RLI has  
21 also advised you of other bond breach invoices  
22 that it has paid, correct?

1 A What are you referring to?

2 Q That you've had to reimburse RLI but  
3 RLI paid those invoices in the first instance,  
4 correct?

5 A Right. Well, there's an  
6 indemnification and exoneration provision, right?  
7 So if RLI paid something and then sent a bill to  
8 me, of course, I'd pay it. And have every single  
9 time.

10 Q That's what I'm asking though, you know  
11 for a fact that there's instances where RLI has  
12 paid bond breach invoices?

13 A I believe there are instances where RLI  
14 chose to pay in advance of Nexus paying, yes.

15 Q Okay. So in paragraph 72 of your  
16 amended counterclaim, you stated RLI has never  
17 been required to pay an invoice itself and has  
18 never had cause to use the cash collateral.  
19 That's not an accurate statement, correct?

20 A Sure it is, they didn't have to. We  
21 would have paid it.

22 Q So you're --

251

1 A As is evidenced by the fact that we did  
2 pay it.

3 Q So if RLI wanted to pay within 30 days  
4 of an invoice, then it has -- it has made payment  
5 itself, before Nexus, right?

6 A Why don't you make note of that,  
7 Ms. Katsantonis, because you just asked me a  
8 question to give you all the instances where you  
9 have abridged the appellate rights of an  
10 individual and harmed them. If you're referring  
11 to instances where you paid those early, then you  
12 have that list, right? If you've paid breaches  
13 early, knowing that we are trying to help the  
14 person, you paid them within 30 days and then  
15 asked us to pay it back, then you've abridged the  
16 rights of that program participant. That's the  
17 whole point.

18 Q Paid early pursuant to what  
19 requirement?

20 A Not a requirement, Ms. Katsantonis.

21 Q The invoice requires it be --

22 A Information and understanding.

252

1 Q An invoice requires it be paid within  
2 30 days, right?

3 A But Ms. Katsantonis, if we were able to  
4 challenge these -- if your client would give us  
5 the ability to challenge these, we wouldn't have  
6 the breach rate we have the RLI bonds. This is --  
7 and it's further problematic that I have had to  
8 make disclosures to RLI clients that you have  
9 sought their personal confidential information,  
10 which of course makes it more likely that the  
11 people will fail to appear.

12 Q Well, I'm trying to get an --

13 A Every turn in this litigation --

14 Q Mr. Donovan?

15 A -- RLI has done things to make this  
16 harder.

17 Q Okay. Mr. Donovan. You said -- I'm  
18 just trying to get your understanding from either  
19 what contract document, what DHS book, what  
20 document do you have to say that paying an invoice  
21 in 30 days is paying it early?

22 A No, Ms. Katsantonis, you and I have

Transcript of Micheal Paul Donovan, Corporate Designee

64 (253 to 256)

Conducted on March 3, 2020

253

255

1 already discussed this. So you have a right to  
 2 pay an invoice. It's just going to affect the  
 3 individual. I'm telling you that it is and I've  
 4 testified to that. Now, you know, you might have  
 5 a different perspective or may care less than I do  
 6 but that's just a reality.

7 Q What specific individual right are you  
 8 saying I've harmed, or RLI has harmed by paying an  
 9 invoice on its due date?

10 A If you pay an invoice that could later  
 11 be rescinded and the breach reinstated, once that  
 12 invoice is paid the breach cannot be reinstated  
 13 and the individual would have to be rebonded.

14 Q Okay. And you have not provided any  
 15 specific -- you don't know, sitting here today,  
 16 how many instances that's ever happened?

17 A Any instance that you paid early it  
 18 could have been happened.

19 Q No, that it did happen.

20 A Where an individual was -- how would we  
 21 possibly know? In other words, when you pay it,  
 22 the important distinction there, Ms. Katsantonis,

254

256

1 is that the breach would have been rescinded but  
 2 the breach can't be rescinded when you pay it so  
 3 there's no way for me to calculate that. I would  
 4 just be guessing.

5 Q Okay. So you don't know.

6 A That's unfortunate. Because those are  
 7 real lives. Those are real people's lives.

8 Q I understand.

9 A Real lives with real kids and families  
 10 and they matter.

11 Q Of course.

12 A But unfortunately --

13 Q So sitting here today you don't know.

14 A Because we weren't given the  
 15 opportunity --

16 Q It's yes, no, or I don't know.

17 A No, I can't tell you how many lives  
 18 were harmed as a result of that policy.

19 Q Okay. And sitting here today you can't  
 20 give me any instance, not one instance in which an  
 21 immigrant's rights were harmed?

22 A I didn't -- I don't think I said that.

1 Q Due to the payment of an invoice.

2 A Let me -- let me supplement my answer  
 3 at break, okay?

4 Q Did you receive -- did you review the  
 5 Department of Homeland Security's response to  
 6 Nexus' subpoena?

7 A I may have seen it. Can you put the  
 8 document in front of me so I can review it, if you  
 9 want to ask me questions about it.

10 Q Well, my one question --

11 A Oh, and, I'm sorry, Ms. Katsantonis,  
 12 you had asked me about the identity of a  
 13 participant who had been harmed. I think I have  
 14 that off the top of my head, if you would like it.

15 Q By payment? Sure. By payment of an  
 16 invoice.

17 A Juan Valoy.

18 Q Okay.

19 A By payment of the invoice.

20 Q What happened?

21 A Well, his bond was taken away. He's  
 22 still in removal proceedings, quasi removal

proceedings. He was an intervenor. You may have  
 read his pleadings. If you haven't, they're there  
 and you can review them. And it sets forth the  
 case involving Mr. Valoy and you'll understand how  
 RLI harmed him.

MR. SHOREMAN: V-A-L-O-Y.

A Right. I think Judge Urbanski had  
 invited the intervenors to file independent  
 actions. I'm saddened that Mr. Valoy didn't.

Ms. Katsantonis, my owe you list is  
 getting rather long. So if -- I would like to get  
 some of these answers for you so that I don't  
 forget anything. So when you're ready and you  
 want to dispatch me for five minutes to go get  
 some answers I'm more than happy to do that, okay?

Q All right. Let me just ask you one  
 more question and then we can do that.

A Of course.

Q And we can certainly mark this.

(Donovan Exhibit 11 marked for  
 identification and attached to the transcript.)

MR. SHOREMAN: Is this 11?

Transcript of Micheal Paul Donovan, Corporate Designee

65 (257 to 260)

Conducted on March 3, 2020

257

259

1 THE COURT REPORTER: Yes.

2 MR. SHOREMAN: Exhibit 11.

3 Q And this was a copy of the Department  
4 of Homeland Security's response to a subpoena  
5 issued by Nexus.6 Did you review their summary of  
7 relevant portions of managing federal receivables?8 A I'd like an opportunity to review. I  
9 think I have seen this communication but I don't  
10 believe that I know it well enough to speak to it  
11 but if you'll give me an opportunity to read it,  
12 then I'm happy to discuss it.13 Q Sure. And I only have one quick  
14 question on it if you want to take the time to  
15 read it, you can. But my quick question, so you  
16 know --17 A You want to preview your question and  
18 I'll tell you whether I feel like jumping in head  
19 first.20 Q Are you aware that the agency has  
21 advised that it's its policy to send delinquent  
22 debts to fiscal services as early as possible and258 1 that the agency may refer its debts as early as 61  
2 days after the delinquency date?3 A I'm going to have to read this,  
4 Ms. Katsantonis.5 Q All right. And I'm looking at the  
6 third to the last paragraph on page 2.

7 A Got it.

8 MS. KATSANTONIS: So why don't we take  
9 a break and then you can look at that and we  
10 can --11 A So I'll tell you what. I will do this,  
12 I will take my break time to – because you've  
13 given me a bunch. I have a bunch of questions.  
14 So I want to take the break time to do that not  
15 necessarily read this and do that because at some  
16 point I'll be on break longer than I'll be in  
17 deposition, right? So I'm going to chase down  
18 these answers but if you don't mind I want to  
19 answer your question before we break. Is that  
20 possible?

21 Q Sure.

22 A Okay. That way we just don't have two

1 things being held over.

2 Q I'm going to do it off the record  
3 though.

4 A You want my answer off the record?

5 MR. SHOREMAN: Well, he can't give you  
6 the answer off the record.

7 Q Well, I don't want to take --

8 A You're not going to throw documents in  
9 front of me and I'm going to read them off the  
10 record so that you get more time and we'll go back  
11 on. If you want me to read a document in  
12 preparation for answering a question then we  
13 should stay on the record and then I will read it  
14 and answer the question. If you don't want me to  
15 answer the question then withdraw it.

16 MR. SHOREMAN: It's only fair.

17 A I'm happy to read it and respond to the  
18 question.19 MR. SHOREMAN: Do you want him to read  
20 it or not?21 MS. KATSANTONIS: Let's go off the  
22 record.

260

1 MR. SHOREMAN: Okay. Let's go off the  
2 record.3 THE VIDEOGRAPHER: We are going off the  
4 record at 16:58.

5 (Recess taken.)

6 THE VIDEOGRAPHER: We are back on the  
7 record at 17:37.

8 BY MS. KATSANTONIS:

9 Q Okay. Great. Before we took a break  
10 there was some issues that you were going to  
11 review. Did you have an opportunity to do that?

12 A Yes, ma'am, I did.

13 Q Okay. And what did you discover with  
14 regard to the RLI bonds?15 A Do you want me to just go through the  
16 list?

17 Q Yes, that would be great.

18 A You asked me how many RLI bonds were  
19 granted under the Pereira decision.

20 Q Uh-huh?

21 A The answer is five. That's appeals.

22 You asked me globally how many appeals have been

Transcript of Micheal Paul Donovan, Corporate Designee

66 (261 to 264)

Conducted on March 3, 2020

261

1 granted because of the Pereira decision. That  
2 answer is 63.

3 You asked me how many RLI appeals were  
4 rejected as untimely, that answer is 17.

5 You asked me globally how many appeals  
6 had been rejected as untimely. That answer is  
7 339.

8 You asked me how many appeals have been  
9 granted globally -- I'm sorry, with RLI -- and  
10 that's nine.

11 Q Uh-huh.

12 A You asked me how many appeals have been  
13 granted globally, and that's 74.

14 You asked me to identify a participant  
15 who I think has been harmed because of the payment  
16 of his bond. I identified Juan Valoy and  
17 referenced you to his pleadings in the intervenor  
18 motions.

19 You asked me how many requests for  
20 mitigation we had with RLI. We have no record of  
21 requested mitigation. I know you said that you  
22 had had people who made phone calls. I talked to

262

1 my people to try to figure out what bonds those  
2 were involved in. I wasn't able to do that. So  
3 if you've got information about that that you can  
4 put in front of me I'll comment on it. But we  
5 didn't have any as it relates to RLI. We had 234  
6 as it relates globally.

7 Q And how many appeals globally have you  
8 filed on the Nexus appeals?

9 A 339. I'm sorry. 339 have been  
10 rejected as untimely.

11 Q Right, right, right.

12 A Total filed appeals is 1,457. Globally  
13 208 with RLI. Sorry about that, Vivian. It's  
14 after 5:00, you know.

15 Q Right. I was just looking at those  
16 numbers.

17 A That doesn't work.

18 Q And can you identity which five of the  
19 RLI bond appeals were granted under Pereira?

20 A I'll have it sent -- I'll have it  
21 produced by the end of the day, when we're done.

22 Q Okay. Thank you.

263

1 A I mean after. Because I can't do it  
2 right now but as soon as we're done.

3 Q Other than the --

4 MR. HARRIS: Counsel, are you okay with  
5 that? Are you going to produce that?

6 MR. SHOREMAN: Produce, the Pereira  
7 documents?

8 MS. KATSANTONIS: The five RLI bond  
9 appeals that were affirmed based on the Pereira  
10 decision we asked for copies of that.

11 MR. SHOREMAN: We can do that today.

12 THE WITNESS: Yeah, Hazzar will put  
13 that list together.

14 MR. SHOREMAN: Okay. We'll have it  
15 emailed to you today.

16 Q And other than the one -- well, do you  
17 know what the basis of the other four appeals that  
18 were affirmed for RLI bonds?

19 A I believe they were notice deficiencies  
20 but I will double-check. I already promised you  
21 that I would give you the nine so I will. So that  
22 will include the five for Pereira and then you'll

264

1 have the others too. Sound good?

2 Q Thank you.

3 A You're welcome.

4 Q Other than the [REDACTED] bond, are  
5 there any other bonds that you're aware of that  
6 were -- where the principal was harmed in any way  
7 because of a payment of an invoice?

8 A I -- in order to answer that question  
9 more fully, I have A, begun to review other  
10 intervenors and I would like to supplement my  
11 answer by the end of today as it relates to  
12 identification of other people who've been harmed  
13 because their bonds have been paid.

14 I also will say that until I have a  
15 full complement of the cancellations and  
16 understand the difference between the number of  
17 cancellations RLI has produced and the number that  
18 they say they have, I would need that information  
19 to be able to determine if other people were  
20 harmed.

21 Q Okay. Other than [REDACTED], right now  
22 you don't have information of anyone else, though,

Transcript of Micheal Paul Donovan, Corporate Designee

67 (265 to 268)

Conducted on March 3, 2020

265

1 correct?

2 A No, I will provide a supplement.

3 Q All right.

4 A And I would say one person is too much.

5 Q As to [REDACTED], can you just tell me

6 again briefly how did the payment itself harm him,

7 the payment of the bond?

8 A We were forced to pay [REDACTED] bond

9 because of an RLI demand.

10 Q How did that --

11 A However, he had been seeking to reopen

12 his case, as I understand it. He is now having to

13 reapply for benefits under USCIC separately

14 because -- so when you have a case before the

15 immigration court then you can file for relief

16 under say USCIS provisions, right, benefits under

17 the Immigration and Naturalization Act, right?

18 You can apply for those benefits pursuant to

19 your -- to your case and removal proceedings which

20 is before the Department of Justice. But the

21 relief that you're seeking is through USCIS. The

22 Department of Justice doesn't make the decision

266

1 about whether you get relief. The citizenship

2 service does and then they communicate it to the

3 Department of Justice and that makes the decision

4 about whether you're removed or not. Do you

5 understand?

6 Q Yep.

7 A So individuals who are in -- and I'm

8 sorry, I'm going to ask you to restate the

9 question because I just don't want to --

10 Q I want to know how the payment of the

11 bond, of [REDACTED], impacted his right?

12 A So in a case like that --

13 Q Specifically his case?

14 A So once his bond is paid, the case is

15 over, he has to go and apply for benefits under

16 USCIS without the protections of a removal

17 proceeding. So for example, if I'm in removal

18 proceedings --

19 Q Are you saying the payment of the bond

20 stopped the removal proceedings?

21 A I'm saying that the payment of the bond

22 closed his case before the Department of Justice.

267

1 He'll have to be rearrested again and a new case

2 opened or he can apply for benefits under USCIS

3 without the protections of being in removal

4 proceedings. But the protections of being in

5 removal proceedings are that you're not going to

6 get arrested because the government now knows that

7 you're applying for benefits. If you apply for

8 benefits under USCIS and you're not in the country

9 legally, you are sort of announcing to the

10 Department of Justice and the Department of

11 Homeland Security that you're here and in many

12 instances, particularly with this administration,

13 there is a negative repercussion to that.

14 So if he loses the protection of the

15 removal proceedings then any benefit that he

16 applies for comes with the risk of being tracked

17 down, arrested, held on a deportation order that

18 isn't valid.

19 Q What specifically happened in this

20 case? What right specifically was affected when

21 the bond was paid?

22 A I'm going to -- I'm going to direct you

268

1 to the pleadings. If you'd like me to, I can

2 consult the pleadings before I answer further but

3 I do want to make sure that the testimony I

4 provide is a hundred percent. I don't want to do

5 it based on all of my recollection.

6 Q Yeah, I want to know exactly how he --

7 A I'm not trying to be cute.

8 Q No, no.

9 A I don't want to say something that I'm

10 not a hundred percent sure but you know I don't --

11 I need to consult. It's just so long ago, you

12 know.

13 Q Right. Is it your testimony that the

14 payment of the bond closed the removal proceeding?

15 A Well, it closed its case before the

16 EOIR, yes.

17 Q And that's precluded the continuation

18 of removal proceeding?

19 A No, I mean, he would be -- he would

20 be -- he would -- they could reassert removal

21 proceedings under the removal order, right? So

22 you know --

Transcript of Micheal Paul Donovan, Corporate Designee

68 (269 to 272)

Conducted on March 3, 2020

269

271

1 Q They would just continue it under the  
2 removal order.

3 A No, that's not how it works. The EOIR  
4 is part of the Department of Justice, right, and  
5 so the EOIR opens cases and the Department of  
6 Justice runs the EOIR court. So it's not like --  
7 it's not like an Article 3 court, right?

8 Q But I just want --

9 A This is like an administrative court.  
10 Well, I understand. And as I told you, I need to  
11 review the documents. No, there's a larger  
12 question. You looked a little confused when I  
13 said it doesn't -- that the removal proceedings  
14 don't go on. I think it is probably instructive  
15 for me to explain that.

16 Q I'm not interested in it.

17 A I understand. But if you did know it  
18 might make a difference in how this case goes,  
19 right?

20 Q No, I just want to know specifically  
21 what rights were precluded or how the payment of  
22 the bond impacted Juan Valoy?

270

272

1 A Ms. Katsantonis.

2 Q Specifically?

3 A You want to know specifically but you  
4 don't want to understand how the payment of  
5 invoices early affects the bond which is what I'm  
6 trying to explain to you --

7 Q No?

8 A -- globally. You want -- you're asking  
9 me to pull from my memory of Juan Valoy, which you  
10 know I'm reticent to do, thereby not answer the  
11 question versus provide you a thorough answer to  
12 the larger question of what happens.

13 Q But I don't --

14 A -- what happens when a person's in  
15 removal proceedings and a bond's paid. That's  
16 what you were asking and I was going to answer it.

17 Q No. I want to know exactly what was  
18 impacted as you contend.

19 A Based on [REDACTED]

20 A Right.

21 Q And as I indicated to you that I wanted  
22 to read those pleadings but --

1 Q We'll move on.

2 A -- I can provide you a general answer  
3 which you're not interested in. But I'm more than  
4 happy to supplement it. I'll get that -- I'll  
5 send you the pleadings.

6 Q Okay. So with regard to -- and I'm  
7 going to say Nexus, and I mean, Nexus, Libre, and  
8 Homes for purposes?

9 A I gotcha.

10 Q Okay. So with regard to the current  
11 status of Nexus' financial condition, what is --  
12 is Nexus currently operating at a profit or loss?

13 A Nexus is currently under the process of  
14 completing its input of financial data into  
15 QuickBooks. That is a process that is ongoing, as  
16 you are aware we have made several productions and  
17 those production changes as though processes  
18 continue.

19 I can testify to a specific point in  
20 time. I can testify to what's in the records now.  
21 I can give you a copy of our KPI and we can talk  
22 about performance.

272  
1 But we need to be clear that we are not  
2 a company that manages our day-to-day performance  
3 in QuickBooks and we have been responding now to a  
4 judicial order to get our books and records into  
5 QuickBooks, which we've been working on, as you  
6 well know we produced millions of pages of  
7 documents.

8 Q The court didn't order Nexus to get its  
9 books into -- to get its finances into QuickBooks,  
10 right? I mean, Nexus advised the court that it  
11 was in the process of entering its financial data  
12 into QuickBooks, right?

13 A No, we advised the court that we  
14 entered the financial data into QuickBooks at the  
15 end of the year. As you may remember, my  
16 understanding of the order and more than happy to  
17 go back and rereview it, but my understanding of  
18 the order was that it did require us to show you  
19 books and records out of QuickBooks even though  
20 those weren't where we originally kept our  
21 day-to-day management, right? So we did -- just  
22 to be clear, when the first preliminary injunction

Transcript of Micheal Paul Donovan, Corporate Designee

69 (273 to 276)

Conducted on March 3, 2020

273

275

1 was issued, it had a significant impact on our  
 2 company because what it did is it stopped  
 3 everything that we were doing and we had to  
 4 completely revisit how we were booking – how we  
 5 were tracking financials.

6 Q Didn't you advise the court that in  
 7 2017 you were preparing taxes and getting the  
 8 finances up to date?

9 A Yes.

10 Q Okay. And that in 2018, you advised  
 11 that Nexus was entering its data into QuickBooks,  
 12 right?

13 A That's correct.

14 Q And --

15 A Pursuant to the order of opening our  
 16 books and records so that you could see them. My  
 17 understanding is that you wanted those records in  
 18 QuickBooks. I didn't realize that you were  
 19 willing to look at KPIs. It might have been  
 20 easier.

21 Q I don't believe RLI asked to see your  
 22 books and records in the manner in which they were

1 over more than a calendar year under the 606 GAAP  
 2 accounting rule, we have to segment out our  
 3 contract -- our contract's based on revenue not  
 4 based on when we receive revenue, which makes  
 5 sense, but based on when it's planned to be booked  
 6 under the new accounting rule. That has created  
 7 significant problems because we've had to go back  
 8 and analyze, you know, life of contract and those  
 9 types of things.

10 So what we have decided to do is we  
 11 are -- we are preparing financials and tax returns  
 12 based on the modified cash accrual method through  
 13 2018 and then in 2019 we will move to the GAAP  
 14 compliant 606 rule and then in 2020 we plan to  
 15 move to audited financials. So that is our plan  
 16 and we're quite confident that while this has been  
 17 a frustrating experience ultimately, you know, the  
 18 company will grow and be stronger as a result of  
 19 it.

20 Q So which company is providing -- so you  
 21 said you're going to do audited financials in  
 22 2020?

274

276

1 maintained. We never specified a way.

2 A I thought you demanded a login to our  
 3 QuickBooks. That's what I seem to remember.

4 Q I mean, we won't -- it's not an -- it's  
 5 not worth discussing.

6 A Okay. Just based on my memory, Vivian,  
 7 I'm not trying to be --

8 Q I know. But Nexus has contended it's  
 9 updating its books since 2017.

10 A Right.

11 Q And now we're at 2020. And is it  
 12 Nexus' testimony that it cannot provide accurate  
 13 information regarding the status of its financial  
 14 condition?

15 A Nexus' testimony is that we have  
 16 engaged Grant Thornton, we've engaged Fusion CPA  
 17 professionals in order to input and get a clear  
 18 picture of where we are financially.

19 When we began this process, the problem  
 20 that we have is that the amount of money that we  
 21 make a year makes us an accrual company for  
 22 accounting purposes and because we earn revenue

1 A That's correct.

2 Q What about 2017, '18, and '19?

3 A We can't -- we can't have audited  
 4 financial statements in 2017 and 2018 because  
 5 we're filing and doing them under the accrual cash  
 6 method, right? So in order to do audited  
 7 financials, you have to be GAAP compliant. In  
 8 order to be GAAP compliant we have to recognize  
 9 revenue under rule 606.

10 Q Okay.

11 A So I can't do that for 2017 or 2018  
 12 because it would set us back even further in  
 13 getting things done.

14 Q Didn't you say --

15 A So we're going to do it in 2019 and  
 16 then in 2020 we move to audited financials. And  
 17 that's based on a conversation and decision that I  
 18 made yesterday in communication with Grant  
 19 Thornton.

20 Q Didn't Nexus testify that in  
 21 November 2018 that it had completed inputting all  
 22 of its data for 2017?

Transcript of Micheal Paul Donovan, Corporate Designee

70 (277 to 280)

Conducted on March 3, 2020

277

1 A We had completed inputting data, but we  
2 were reconciling data. As you well know one of  
3 the concerns that you've had are items that were  
4 booked as revenue of, like, combined client  
5 revenue of such and such million, for example. So  
6 while information was inputted into QuickBooks, we  
7 have been reconciling QuickBooks, as you know,  
8 because you've seen the reports and you've seen  
9 the different iterations of them. So you -- and  
10 in fact, you even asked deposition questions about  
11 what was transferred from a group number to  
12 individuals. So that's what's happening and it is  
13 a process.

14 Q What I'm trying to understand is I just  
15 want to know where you stand financially.

16 So for -- and we had Mr. Moore's  
17 deposition that you sat in on last week, right?

18 A Yes, ma'am.

19 Q And Mr. Moore testified that for the  
20 '17, '18, and '19, that Nexus does not know  
21 whether it's operating at a profit or a loss; is  
22 that true?

1 profit or loss for 2017?

2 MR. SHOREMAN: Asked and answered.

3 A I believe that we broke even. I don't  
4 know what the exact dollar amount is.

5 Q You don't know?

6 MR. SHOREMAN: Asked and answered.

7 A You're asking my personal knowledge? I  
8 don't know. I don't know.

9 Q No, I'm asking Nexus' -- today is the  
10 day that Nexus is supposed to let me know what its  
11 financial condition is.

12 A I answered the question, Vivian. You  
13 might not like the answer but I answered the  
14 question. We are finalizing our financial  
15 statements and you'll have a copy as soon as  
16 they're done.

17 Q So for 2017, you don't know whether  
18 Nexus operated at a profit or loss?

19 A The answer's going to be the same no  
20 matter how many times you ask the question.

21 Q Is the answer no?

22 A I do not know exact what the profit or

278

1 A Nexus believes that we'll break even or  
2 close to break even for those years. We are in  
3 the process of finalizing the financial statements  
4 and as soon as I have them and the tax returns and  
5 as soon as I have them, you will.

6 Q Okay. I'm not interested in what Nexus  
7 believes. I want to know what facts you have.

8 So does Nexus know whether it operated  
9 at a profit or loss for 2017?

10 MR. SHOREMAN: Asked and answered.

11 A Yeah, we believe that we broke even or  
12 close to broke even.

13 Q You believe based on what basis?

14 A And once we have -- once we have the  
15 financial statements done I will provide copies to  
16 you.

17 Q No.

18 A No? You don't want them? I won't give  
19 them to you then.

20 Q I asked you not to tell me your belief.  
21 I want to know the facts, okay?

22 Do you know whether Nexus operated on a

1 loss amount was but as soon as those financial  
2 statements are done, Ms. Katsantonis, you will  
3 have a copy.

4 Q Okay.

5 A And 2018, do you know whether Nexus was  
6 operating at a profit or loss?

7 A And as I said, the same answer is going  
8 to apply until I have the financial statements. I  
9 don't know what the exact dollar amount is. I  
10 have a sense. You're not interested in my sense  
11 so I will tell you that --

12 Q I'll talk to you about your sense later  
13 and what it's based on.

14 A I already told you. I answered that  
15 question already. But based on what -- I don't  
16 know what the exact dollar amount is but as soon  
17 as we have the financial statements completed,  
18 Ms. Katsantonis, you'll have a copy.

19 Q All right. And for 2019, you don't  
20 know whether Nexus operated at a profit or loss,  
21 correct?

22 A So we -- basically -- I don't know the

280

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Transcript of Micheal Paul Donovan, Corporate Designee

71 (281 to 284)

Conducted on March 3, 2020

281

283

1 exact dollar amount until we have the financial  
2 statements.

3 Q I'm not asking for the exact dollar  
4 amount.

5 A Sure you are.

6 Q No, I'm asking whether you operated at  
7 a profit or loss.

8 MR. SHOREMAN: Asked and answered.

9 A And I don't know until I have the exact  
10 dollar amount.

11 Q So you don't know?

12 MR. SHOREMAN: Asked and answered.

13 A Hence my answer.

14 Q And what role is Grant Thornton taking?

15 A What do you mean?

16 Q Well, there was testimony that you've  
17 also hired Fusion CPA.

18 A Uh-huh.

19 Q So what role is Grant Thornton doing  
20 with respect to your financial record?

21 A Well, that's an easier to answer  
22 question. Grant Thornton is focusing on the GAAP

281

283

1 Thornton yesterday.

2 Q Do you have any specific time before  
3 September?

4 A I don't. That's when the extension is  
5 up so that's the reason it's relevant. That's why  
6 September is relevant. But we're hoping to get it  
7 done before then.

8 Q And what about with Fusion CPA?

9 A Fusion CPA is currently working on '17  
10 and '18, as I indicated, Grant Thornton is going  
11 to review those, they'll naturally have to,  
12 Ms. Katsantonis, because of course they're going  
13 to have to extrapolate the GPS revenue, the  
14 contract revenue, and all of that stuff. So, you  
15 know, with the old -- pursuant to the old  
16 contracts and the new contracts it's just a lot to  
17 take into consideration. So they're doing that  
18 and then Grant Thornton will get it to a point  
19 where it's GAAP compliant.

20 Q And with regard to the financial  
21 condition of Nexus in 2017, at the November 2018  
22 preliminary injunction hearing, Nexus represented

282

284

1 compliant standard for 2019 and the audited  
2 financials beyond.

3 Q Okay. And what -- and what is Fusion  
4 CPA doing?

5 A We also have Grant Thornton looking  
6 over the financial statements. We have Fusion CPA  
7 producing the financial statements and then Grant  
8 Thornton will be reviewing them. We will then  
9 obviously have the GAAP accounting standard,  
10 financial statements for 2019, which Grant  
11 Thornton is taking the lead on and then audited  
12 financials 2020 and beyond, which Grant Thornton  
13 will take the lead on.

14 Q So Grant Thornton will issue audited  
15 financial statements only for 2020 and beyond?

16 A 2019 and beyond.

17 Q And do you have a time frame in which  
18 Grant Thornton is required to provide deliverables  
19 to Nexus?

20 A We expect that the 2019 statements and  
21 tax filings will be ready before the -- before  
22 September, pursuant to my communication with Grant

1 that the financial statement it provided was  
2 accurate, correct?

3 A I think we represented it was accurate  
4 at the time with any kind of caveats that it may  
5 not be complete.

6 Q Well, and since then have you had  
7 reason to understand that it was not complete?

8 A I believe I have been clear throughout  
9 this entire litigation that it's not complete and  
10 that we're completing it. I think we were very  
11 clear about that.

12 Which document are you looking at? Or  
13 do you have a document you want me to look at?

14 Q No, I was asking you about what was  
15 submitted to the court.

16 A You asked specifically about 2017.

17 Q Right?

18 A That's why I was asking is there a  
19 document that you want me to review? I'm happy to  
20 look at it.

21 Q And so at the court hearing Nexus  
22 asserted that in 2017 it was operating at

Transcript of Micheal Paul Donovan, Corporate Designee

72 (285 to 288)

Conducted on March 3, 2020

285

1 profit, right?  
2 **A Do you have -- I mean, I assume that**  
3 **you're representing -- you're talking about**  
4 **something that we --**

5 Q Presented to the court.

6 **A -- a statement, right? So if you have**  
7 **something that you're asking me questions about I**  
8 **would ask that you provide it to me so that I know**  
9 **what we're talking about.**

10 Q But you don't know whether or not Nexus  
11 advised the court it was operating at a profit in  
12 2017?

13 A Again, I need to understand what report  
14 you're talking about. We made several  
15 different -- 2017 we were engaged in this  
16 litigation, you know, pretty heavily. I just want  
17 to make sure I know what you're talking about.  
18 I'm sure you want to -- I'm sure you want me to  
19 know what you're talking about too.

20 MR. SHOREMAN: Thank you.

21 MS. KATSANTONIS: Let me mark that one,  
22 I'm not sure. Hold on.

286

1 MR. SHOREMAN: Do you want to have this  
2 one marked? This would be 12.

3 MS. KATSANTONIS: I think it's the same  
4 as this one. Here, let me mark this one. It's  
5 the same thing but they're in different forms and  
6 they have the same number.

7 (Donovan Exhibit 12 marked for  
8 identification and attached to the transcript.)

9 MR. SHOREMAN: This is too wild.

10 A This looks completely -- no.

11 Q So the back page of this document is  
12 dated Monday, November 26th, 2018.

13 Do you see that?

14 MR. SHOREMAN: Last page?

15 A I do.

16 MR. SHOREMAN: Excuse me, counsel, the  
17 third page of my document has some writing on it.  
18 Is that yours?

19 A Yeah, mine too.

20 Q It's not my writing and we can ignore  
21 it. For purposes of testimony just --

22 A Ignore it.

287

1 Q -- ignore it. I don't believe it was  
2 presented to the court with the writing. So for  
3 the record this is document 138-20. That was  
4 filed with the court on November 28th, 2018.

5 Q So Mr. Donovan, are you aware that this  
6 profit and loss statement was submitted by  
7 Nexus --

8 A I can see the case.

9 Q -- as a representation of its  
10 financials?

11 A Yeah, I can see the case detail on the  
12 top and I believe this is what we provided.

13 Q And in fact, reviewing this do you  
14 understand now that it's not an accurate profit  
15 and loss statement for the January through  
16 December 2017 time frame?

17 A Well, as we've continued to update our  
18 financial statements, they have changed and I  
19 think we've been clear about that. So I'm sure  
20 that when it was produced it was accurate as of  
21 when it was produced with the information that was  
22 in QuickBooks. I mean, this is a QuickBooks

288

1 profit and loss statement.

2 So we have provided -- and you know,  
3 Ms. Katsantonis, with all due respect, you know  
4 that there have been several -- you have been  
5 provided several different updates as Nexus has  
6 been completing its process.

7 Q So --

8 A So it's not like you don't know that.

9 You guys have been receiving updates extensively.

10 Q I'm trying to understand, Mr. Donovan,  
11 when all of the data was input, or if it has been  
12 inputted for 2017?

13 A All of the data has been inputted.  
14 They were working on reconciliations to ensure  
15 that -- and a combined client income, for example,  
16 was extrapolated out to the specific client or  
17 combined in -- expenses were extrapolated out.

18 Q Mr. Donovan, has all the reconciliation  
19 for 2017, has all the -- first of all, has all the  
20 data input for 2017, is it complete?

21 A It's not -- it's not fully reconciled  
22 or we would have the financial statements for you.

Transcript of Micheal Paul Donovan, Corporate Designee

73 (289 to 292)

Conducted on March 3, 2020

289

291

1 And you will have them and you'll have them soon  
2 and that will be when it is fully reconciled.

3 Q Okay. So as of November 2018, the --  
4 QuickBooks was -- did not adequately represent the  
5 financial condition of Nexus, correct?

6 A As of 2018, we were adding data to  
7 QuickBooks as we explained to you and the court to  
8 ensure that we could produce access to the  
9 financial statements that were ordered by the  
10 court.

11 Q I'm just trying to --

12 A And we --

13 Q I'm just trying to -- I'm not -- I'm  
14 just trying to understand timing of when things  
15 were -- and if they're still not accurate as of  
16 today that's great. I'm just trying to understand  
17 that. It's very simple.

18 A I've answered that question, Vivian.  
19 So the data is still being reconciled. When it is  
20 reconciled, we will file the taxes and produce the  
21 income statements and submit them to you. That  
22 will happen as soon as it's done.

290

292

1 Q Okay.

2 A And I'm happy to say that will be done  
3 soon. So it's a process. You know, it's  
4 happening. I will produce those when we file  
5 them.

6 Q All right. So the profit and loss  
7 statements that we have for 2017 are inaccurate as  
8 of today, correct?

9 A They're a work in progress, as we say.

10 Q They're inaccurate as of today.

11 A They do not contain all of the  
12 information and all of the reconciled information  
13 as we have explained throughout this process.

14 Q And so they don't --

15 A It's a bit disingenuous to go into  
16 court with a club and force people to print  
17 documents you know aren't done and then in a  
18 deposition hit them for producing documents that  
19 aren't done. Ms. Katsantonis, you know that these  
20 financial documents weren't complete when you  
21 demanded the productions. You've known that they  
22 weren't reconciled. You know, perhaps it's nice

1 for deposition transcript to look like, you know,  
2 but you know, you know that this is a work in  
3 progress and you know that they will be produced  
4 as soon as it's done.

5 Q Okay. So with regard -- and so based  
6 on your testimony, I think I know the answer to  
7 the question but let me ask it, does Nexus  
8 currently maintain or otherwise have access to a  
9 balance sheet or other financial statement that  
10 accurately sets forth Nexus' assets and  
11 liabilities?

12 A No. But we are close in that we  
13 continue to reconcile data every day and we're  
14 much, much closer to having fully producible,  
15 printable, and one hundred percent up-to-date  
16 documents through QuickBooks.

17 Q And that's the same for 2017, '18, and  
18 '19, correct?

19 A That's correct.

20 Q Okay. And do you have an understanding  
21 of what is the current aggregate value of Nexus'  
22 assets?

1 A It looks like our most recent profit  
2 and loss, which was provided to you from January  
3 through December of 2019, list total current  
4 assets at \$784,088.20.

5 Q And are you looking at a document Bates  
6 Stamped NEXUS027807?

7 A No. I'm looking at a document I  
8 brought today that I plan to give you. But it may  
9 very well be the same document, I don't know.

10 Q May I see it, please?

11 A Of course you may. Killing trees here.

12 Q Thank you.

13 A You're welcome.

14 Q Do you have an understanding why this  
15 is marked "old" on the top?

16 A I believe it is what was produced.

17 Q So you don't know why it's marked  
18 old -- next to Nexus Services Inc. old balance  
19 sheet.

20 A Let me get the answer to that question.

21 Q Okay. If you don't know, let's just  
22 keep going and then you can let me know.

Transcript of Micheal Paul Donovan, Corporate Designee

74 (293 to 296)

Conducted on March 3, 2020

293

295

1 A Sure. Yeah, absolutely.

2 Q And in looking at this balance sheet,  
3 it does not include any rentals from any of the  
4 Homes properties?

5 A Yeah.

6 Q Do you have another copy of that?

7 A I don't. Sorry. But this is a copy  
8 for you. At least I brought something to share --  
9 or to leave.

10 As you may be aware, we did break Homes  
11 P&L out and you are aware of that, of course,  
12 because we produced those to you pursuant through  
13 the special master production. So if they're --  
14 if there's a -- there may be a reason for that in  
15 that they separated out the Homes P&L from Nexus.  
16 And we actually have a separate account for Homes.

17 Q Do you also have with you the alleged  
18 2019 profit and loss statement, the most recent  
19 one? I can give you what has been provided to us  
20 and you can tell me if this is accurate?

21 A Please.

22 MS. KATSANTONIS: Let's mark that.

1 added, I don't know.

2 Q Well, if it hasn't been reconciled it  
3 can't be accurate, right?

4 A Well, it can be accurate in that what's  
5 in there has been properly inputted. Before it's  
6 reconciled we wouldn't run a financial report  
7 until we reconciled it. We wouldn't file a tax  
8 return until we reconciled it. But we're putting  
9 information into QuickBooks every day. So all of  
10 the information is the information you put in. So  
11 at any point in time you could see what  
12 information you put into QuickBooks.

13 Q Right. These documents are not an  
14 accurate reflection of Nexus' financial condition,  
15 is that true?

16 A As I indicated, Ms. Katsantonis, no.

17 Because we are continuing to update them as you  
18 well know because you sought an injunctive order  
19 against me to make me do it. So you know we're  
20 continuing to do it. You have walked with us  
21 through that process. It is not done but it's  
22 closer than ever and we're excited that we're

294

296

1 (Donovan Exhibit 13 marked for  
2 identification and attached to the transcript.)

3 MR. SHOREMAN: Is this the alleged  
4 Exhibit 13?

5 A This is, what I'm looking at, Vivian,  
6 is the same document.

7 Q Okay. And so are you basing the  
8 answers to your questions on this 2019 profit and  
9 loss statement or balance sheet?

10 A Yes.

11 Q Okay.

12 A Between that and the balance sheet,  
13 yes, ma'am.

14 Q Is it your contention that this  
15 document is accurate?

16 A It's my contention that this document  
17 is accurate at the time. As I told you before, we  
18 are continuing to reconcile and continuing to add.  
19 So I can't tell you that it's a hundred percent  
20 accurate. I can tell you that everything that's  
21 in there is accurate. There may be things that  
22 aren't reconciled or things that haven't been

1 going to be able to get those reports to you very  
2 soon.

3 Q Your contention is that that 2019  
4 profit and loss statement is closer than ever to  
5 the accurate financial condition of Nexus?

6 A I would say that it's closer than  
7 previous iterations and we're going to continue  
8 to -- now, of course in 2019, we have not  
9 reconciled that year. So 2018 or 2017's  
10 reconciliations will be further along naturally.

11 Q So 2019 is not an accurate reflection  
12 of Nexus' financial condition, the profit and loss  
13 statement, correct?

14 MR. SHOREMAN: Asked and answered.

15 A The information inputted in the 2019  
16 financial statement is absolutely accurate but it  
17 may not be full and therefore -- and there may not  
18 be reconciliations done.

19 Q I'm just asking. So it's not --  
20 because of those things that you're talking about,  
21 it is not an accurate reflection of Nexus'  
22 financial condition, right?

Transcript of Micheal Paul Donovan, Corporate Designee

75 (297 to 300)

Conducted on March 3, 2020

297

299

1 MR. SHOREMAN: Objection. Asked and  
2 answered.

3 A Right. Exactly. We would normally  
4 want to reconcile a financial statement before we  
5 would file a tax return, for example. So I – we  
6 are continuing to reconcile client income, I think  
7 that's really one of the major parts of this. And  
8 so for that purpose, for that reason it's not  
9 accurate now because it doesn't reflect all the  
10 income.

11 MS. KATSANTONIS: Mark that.  
12 (Donovan Exhibit 14 marked for  
13 identification and attached to the transcript.)  
14 Q This is the 2018 profit and loss  
15 statement that was also produced to us recently in  
16 this litigation.

17 So I'm going to ask you if you compare  
18 the two, for example, the 2019 profit and loss  
19 statement doesn't include any of the rent from the  
20 Homes properties, correct?

21 A That's correct.

22 Q And with regard to GPS costs on page 2,

1 balance may include equipment that has -- once  
2 it's returned is offset. So we are going to --  
3 we're not going to --

4 Q I'm just trying to get to the accuracy  
5 of this statement.

6 A I gotcha. And I'm explaining it.

7 Q You don't think it's accurate, do you?

8 A Do I think that it could be more  
9 accurate? Absolutely. I mean what you're saying  
10 is -- what I'm not going to let you do,

11 Ms. Katsantonis, is put words in my mouth to  
12 somehow say that something we put on a financial  
13 statement is inaccurate. It's absolutely  
14 incorrect to say that. We were forced to add our  
15 financial data to QuickBooks for the purposes of  
16 complying with an order in this case. An order  
17 you sought. An order you argued for.

18 Q Mr. Donovan, I'm just trying to ask you  
19 whether --

20 A Articulately, I might add.

21 Q -- this document, are you contending  
22 it's accurate?

298

300

1 for example, the 2018 profit and loss sets forth  
2 GPS costs at 4.6 million?

3 A Uh-huh.

4 Q Do you see that?

5 A I do.

6 Q And the 2019 has it at 1.152 million?

7 Do you see that?

8 A I do.

9 Q And do you believe that number's  
10 accurate?

11 A I do believe that we need to further  
12 reconcile it, but I also do believe that there's a  
13 significant reduction in GPS costs for 2019, yes.  
14 I don't – yeah, I would want to see the fully –  
15 I would want to have an opportunity to fully  
16 revise and reconcile our financial statements  
17 which our accounting team is doing.

18 Q Don't you have an account payable for  
19 2019 to Buddi of 3-point -- over \$3 million?

20 A There is a balance, yes.

21 Q And that's not reflected here, right?

22 A It wouldn't necessarily be because that

1 A And I'm telling you --

2 Q That's all I want to know.

3 MR. SHOREMAN: Objection.

4 A -- that it is accurate to the extent  
5 that the information that is in there is accurate  
6 but it may not be the full complement of  
7 information. We certainly didn't put anything in  
8 here that wasn't accurate or wasn't truthful.

9 Q But it's not a full --

10 A It's not a full production of the  
11 financial status of the company, correct. But  
12 nothing that's in here has been put in  
13 incorrectly. I just want to make sure we're  
14 clear. We're continuing to add information,  
15 continuing to reconcile bank accounts and as we  
16 do, we'll get -- once we file the tax returns and  
17 have the income statements, as I said we'll  
18 produce them to you.

19 Q For 2019 it provides bond breach  
20 payment of 978,000; that's not an accurate number,  
21 is it?

22 A It would seem that there are bond

Transcript of Micheal Paul Donovan, Corporate Designee

76 (301 to 304)

Conducted on March 3, 2020

301

1 breaches that probably aren't reconciled in this  
 2 report yet but that would also not surprise me  
 3 given the fact that we're continuing to work on  
 4 '17 and '18.

5 Q Right. My only point I'm trying to  
 6 make is that the numbers in this -- you're not  
 7 relying on this profit and loss statement as an  
 8 accurate depiction of Nexus' financial condition,  
 9 correct?

10 MR. SHOREMAN: Objection. Asked and  
 11 answered.

12 A As I think we said in 2017, we never  
 13 relied on QuickBooks which is why it was very  
 14 frustrating that it's pursuant to the order that  
 15 you argued for in this case, we had to put all  
 16 that information in there. It has completely  
 17 slowed us down and it's the reason that we're in  
 18 the situation that we're in right now. We're  
 19 fixing it, we're getting it done and we'll be  
 20 stronger as a result of it.

21 Q So, again, with regard to travel, let's  
 22 say, the 2018 has 725,000 and the 2019 has

303  
 1 Q All right. And so neither of these  
 2 profit and loss statements are accurate to fully  
 3 show the financial condition of Nexus, correct?  
 4 MR. SHOREMAN: Asked and answered.

5 A They're not fully finished, but once  
 6 they're done, you will have them, promise you.

7 MS. KATSANTONIS: I want to make sure  
 8 that Nexus is not relying on these documents ?

9 A I told you we never relied -- I told  
 10 you we didn't rely on the QuickBooks when you  
 11 asked us to put it in there two years ago. No,  
 12 we're not. Absolutely not.

13 Q Well, that -- what led us to it is  
 14 because I said what is the current aggregate value  
 15 of Nexus' asset. So is the answer you don't know?

16 A The answer, as it relates, I can answer  
 17 what's on this statement. I can tell you --

18 Q I don't want to know that. I want to  
 19 know that.

20 A -- that we're reconciling it.

21 Q I want to know what the answer is.

22 A And that's the answer.

302

1 negative \$231. That wouldn't be an accurate --  
 2 A Probably would be indicia that it  
 3 hasn't been reconciled yet.

4 Q Okay. And has your payroll -- what is  
 5 your current payroll?

6 A Our current payroll a week is now about  
 7 110,000.

8 Q So on a yearly basis?

9 A That would be 52 100,000s, so

10 5.2 million.

11 Q Okay.

12 A That was my horrible math so if that's  
 13 wrong.

14 Q So on the 2018 statement, it provides  
 15 payroll at 7.5 and for 2019, it provides payroll  
 16 at 2.275 million. Those numbers would not be  
 17 accurate either, correct?

18 A Obviously payroll is probably still  
 19 being reconciled in 2019.

20 Q Right.

21 A Do you want to grab the door? I'm just  
 22 thinking that that might become --

304  
 1 Q What is the current aggregate value of  
 2 Nexus' assets? You don't know, is that the  
 3 answer?

4 A We're currently reconciling our  
 5 financial data. I have what's available. I can  
 6 quote you what's on the reports that you have. I  
 7 can tell you that we're continuing to reconcile  
 8 it.

9 Q Right. But you just said you're not  
 10 relying on the report.

11 A That's all I can tell you. Right. We  
 12 are -- that's why we're reconciling them.

13 Q Let's put the reports away. You're not  
 14 relying on them, right?

15 A Right.

16 Q So I want to know what is the current  
 17 aggregate value of Nexus' assets?

18 MR. SHOREMAN: Objection.

19 A And I told you that we're reconciling  
 20 these reports. You understand exactly --

21 Q So you don't know -- can't you just  
 22 simple advise me that you don't know?

Transcript of Micheal Paul Donovan, Corporate Designee

77 (305 to 308)

Conducted on March 3, 2020

305  
**1 A I already told you. How many times**  
**2 have I told you, I do not know exactly as we are**  
**3 continuing to reconcile the financial statements,**  
**4 something you're quite well aware of.**

**5 Q Do you know how much Nexus currently**  
**6 has in liquid assets that are presently available**  
**7 to satisfy Nexus' current liabilities?**

**8 A I can get that information for you.**

**9 Q But you don't know as you sit here**  
**10 today?**

**11 A Off the top of my head I don't know**  
**12 what our liquid assets are but I can certainly**  
**13 give it to you by the end of the deposition.**

**14 Q What is the aggregate value of Nexus'**  
**15 unencumbered interest in real estate assets?**

**16 MR. SHOREMAN: The unencumbered value**  
**17 of real estate assets?**

**18 Q Right?**

**19 A You're asking for the value of**  
**20 unencumbered real estate or the equity in**  
**21 encumbered real estate?**

**22 Q The unencumbered interest in real**

**306  
1 estate assets?**

**2 A A dollar amount?**

**3 Q Uh-huh.**

**4 A I believe it's \$36,000 in one piece of**  
**5 property that is fully owned.**

**6 Q And what property is that?**

**7 A It's -- it's a property in Middlesex**  
**8 County, Virginia. It's a piece of land, I'll have**  
**9 to get you the detail on it.**

**10 Q Okay. And to what extent are Nexus'**  
**11 real estate assets encumbered by liens or**  
**12 collateral agreements or deeds of trust from other**  
**13 third parties?**

**14 A So all of our built properties have**  
**15 mortgages on them so they have deeds of trust.**  
**16 And then some of our properties, like our**  
**17 corporate campus, has a deed of trust to a bail**  
**18 agent as well.**

**19 Q And who's the bail agent?**

**20 A Statewide Bonding.**

**21 Q And is that Marco DiMandri [sic]?**

**22 A It is not. LiMandri. Big Marco,**

**307  
1 remember?**

**2 Q Does Big Marco not have any liens on**  
**3 any of your property?**

**4 A He does not.**

**5 Q And are there any other liens or**  
**6 collateral agreement that any of the real estate**  
**7 has been encumbered by?**

**8 A There were. However, I believe all of**  
**9 them have been released. The only one left is**  
**10 the -- the only one left is the corporate campus.**

**11 But, yes.**

**12 Q And you have no equity in the corporate**  
**13 campus?**

**14 A Well, we have some equity in the**  
**15 corporate campus but then we have a deed of trust**  
**16 on a second deed of trust so no when you consider**  
**17 that.**

**18 Q So it's all encumbered?**

**19 A Right.**

**20 Q What is the aggregate value of Nexus'**  
**21 interest in accounts receivable?**

**22 A We don't track accounts receivable that**

**308  
1 way. We are unfortunately going to have to under**  
**2 the new accounting rules and so it's a reality**  
**3 that we're facing. But presently we don't track**  
**4 AR that way and that's because we have a very**  
**5 aggressive payment waiver program. We're proud to**  
**6 say that over half of our clients don't pay each**  
**7 month, which sounds odd, but we're proud to say**  
**8 that because it's reflective of the service that**  
**9 we provide to a disenfranchised community that**  
**10 needs help, right? So the fact that more than**  
**11 half of our people don't pay every month is a sign**  
**12 that we're helping people who really need it.**

**13 MR. WILLIAMS: Are you asking all these**  
**14 financial questions to see if we can reach bond**  
**15 breach obligations?**

**16 MS. KATSANTONIS: Yes.**

**17 MR. WILLIAMS: That's what I'm thinking**  
**18 you're trying -- he can answer that. Just say do**  
**19 you believe that you can financially meet bond**  
**20 breach obligation and he can explain to you**  
**21 exactly why.**

**22 MS. KATSANTONIS: I'm trying to find**

Transcript of Micheal Paul Donovan, Corporate Designee

78 (309 to 312)

Conducted on March 3, 2020

1 out what his present financial condition is.  
2 MR. WILLIAMS: Because he's met them  
3 all up to date.

4 Q What is the aggregate value of -- so  
5 when you talked about the aggregate value of  
6 Nexus' interest and accounts receivable, in your  
7 2016 tax report --

8 MR. HARRIS: No, balance sheet.

9 Q Sorry, balance sheet, you had an amount  
10 for accounts receivable. Where was that derived  
11 from?

12 A Can you point me to what you're talking  
13 about?

14 Q No, I don't have that with me. I just  
15 want to know.

16 A You're referring to a document that  
17 you're asking me to review but you're not telling  
18 me what the document is and you're not providing  
19 it to me? Is that what we're talking about  
20 because I'm not going to answer that if that's  
21 what we're talking about. That doesn't make any  
22 sense.

310  
1 Q Well, do you recall that prior to RLI  
2 executing bonds, they asked that Nexus provide a  
3 balance sheet?

4 A I believe there was communication with  
5 Mr. Sandoz about a balance sheet, yes.

6 Q And in that balance sheet, do you  
7 recall that it contained a number for accounts  
8 receivable?

9 A I believe that balance sheet was an  
10 estimate and it was something that Mr. Sandoz was  
11 gracious enough to help us with. At that point in  
12 time in our infancy, we were not as sophisticated  
13 as we would have liked to have been and Mr. Sandoz  
14 was very helpful.

15 Q So the values were just based on an  
16 estimate, is that what you're saying?

17 A No. Well, I'm sure it was based on  
18 what the estimate of our AR was. If you'll look,  
19 I think in that balance sheet all of those numbers  
20 are like whole numbers.

21 Q What?

22 A I'm going to run to the restroom real

311  
1 quick. Do a quick bio break.

2 Q Sure.

3 THE VIDEOGRAPHER: We are going off the  
4 record at 18:28.

5 (Recess taken.)

6 THE VIDEOGRAPHER: We are back on the  
7 record at 18:58.

8 BY MS. KATSANTONIS:

9 Q Okay, Mr. Donovan, earlier today you  
10 testified regarding requests from Nexus to RLI  
11 with regard to pre-invoice disputes.

12 A Right.

13 Q And does the documents you're relying  
14 on you forwarded to your counsel and he forwarded  
15 to us, right?

16 A The initial email from -- as I told you  
17 the email that I sent you was a base email from  
18 Juliana explaining the resolution dispute process.  
19 But there were several emails where she raised  
20 different cases.

21 Q Well, are these all the emails you're  
22 relying on?

312  
1 A Well, that was one of the emails that I  
2 was relying on that I told you I would forward to  
3 counsel.

4 Q There appears to be --

5 A But, yes, I did forward this to  
6 Mr. Shoreman.

7 Q Right. Well, are these all the emails  
8 you're relying on with regard to that testimony?

9 A I believe there are other emails from  
10 Ms. Gutierrez that also seek disputes. So I think  
11 you have them. I think they've been produced  
12 already.

13 Q So there's no other emails sitting here  
14 today that you can identify that support the  
15 contention that Nexus asked RLI to give an  
16 authorization for pre-invoice disputes but failed  
17 to do so?

18 A That's literally the opposite of what  
19 my answer was. I told you that we had produced  
20 other emails and that there are other emails in  
21 production. We've produced a large number of  
22 emails.

Transcript of Micheal Paul Donovan, Corporate Designee

79 (313 to 316)

Conducted on March 3, 2020

	313		315
1	Q Okay. But sitting here --	1	<b>They represented to me that those conversations</b>
2	<b>A So today I have given you this as an</b>	2	<b>occurred and I'm representing to you that that's</b>
3	<b>example. But it is not a full complement of.</b>	3	<b>my report based on the communication.</b>
4	Q Okay. And do you have -- do you have	4	Q And can you --
5	an understanding of what the full complement of	5	<b>A I will review records. I'll also talk</b>
6	emails -- I think you said you thought you looked	6	<b>to staff.</b>
7	at five or six emails. And that's why I thought	7	Q But you can't provide a single example
8	these were the five or six emails you had	8	sitting here today?
9	reviewed?	9	<b>A At this point in time other than the</b>
10	<b>11 that you're maybe misunderstanding I understand.</b>	10	<b>12 email that I provided, no. But I'm more than</b>
11	<b>12 This is one email.</b>	11	<b>13 happy to search -- I'm confident that,</b>
12	Q But they're different dates on it,	12	<b>13 Ms. Katsantonis, that you already have that</b>
13	right?	13	<b>14 production.</b>
14	<b>A No, it's true because there were</b>	14	MS. KATSANTONIS: We're going to mark
15	<b>16 attachments to it but what I meant is I reviewed</b>	15	that email for the record, please.
16	<b>17 multiple emails, right? So this is one of the</b>	16	(Donovan Exhibit 15 marked for
17	<b>18 emails that I reviewed.</b>	17	identification and attached to the transcript.)
18	Q So do you recall a single instance	18	<b>A You get a giant exhibit.</b>
19	20 where Nexus provided backup documentation and the	19	MR. SHOREMAN: I would like mine on
20	21 facts to support a dispute?	20	bigger paper, please.
21	<b>A I know -- I know that that occurred.</b>	21	Q And you -- as we discussed before, are
		22	22 you aware that RLI requested Nexus to provide it
		314	
1	Q How do you know that?	1	316 with backup documentation to substantiate any
2	<b>A Because it was represented to me by</b>	2	dispute, correct?
3	<b>3 Juliana Gutierrez by Erik Schneider.</b>	3	<b>3 A I'm aware that RLI did not seriously</b>
4	MR. SHOREMAN: Wait a second, Juliana	4	<b>4 engage in the process of allowing us to dispute.</b>
5	5 is an attorney, correct?	5	<b>5 I'm aware that RLI arbitrarily and capriciously</b>
6	THE WITNESS: That's correct.	6	<b>6 denied our ability to dispute. And I'm aware that</b>
7	MR. SHOREMAN: If you disclose	7	<b>7 our fail rate with RLI is higher as a result of</b>
8	8 conversation with an attorney you're waiving	8	<b>8 it.</b>
9	9 attorney-client privilege.	9	Q Based on what specific facts?
10	THE WITNESS: Okay.	10	MR. SHOREMAN: Asked and answered.
11	Q Okay. So you didn't review any	11	<b>A We have never been able to dispute an</b>
12	12 documents that supported that contention, is that	12	<b>12 invoice -- a breach with RLI because you've never</b>
13	13 correct?	13	<b>13 given us permission to.</b>
14	<b>A I'm sorry?</b>	14	Q Hasn't RLI asked you appropriately for
15	Q You didn't review any documents that --	15	backup documentation prior to submitting a
16	16 there were no documents that you reviewed or you	16	dispute?
17	17 saw where Nexus provided to RLI supporting	17	<b>A My staff has told me that regardless of</b>
18	18 documents for the bases for a pre-invoice dispute?	18	<b>what information was provided, RLI was resistant</b>
19	<b>A No. But based on conversations with my</b>	19	<b>19 to providing the authorization, every single time</b>
20	<b>20 staff I know that those did occur. I had</b>	20	<b>20 it was sought and it became obvious that it would</b>
21	<b>21 conversations with both Erik and before Juliana</b>	21	<b>21 never be granted.</b>
22	<b>22 and I know that those conversations occurred.</b>	22	Q And you don't have any documentation,

Transcript of Micheal Paul Donovan, Corporate Designee

80 (317 to 320)

Conducted on March 3, 2020

317

319

1 sitting here today, to support that, right?  
**2 A No more than I've already produced but**  
**3 I'm happy to tell you that I'm sure it's in your**  
**4 email production.**

5 MR. SHOREMAN: Would that be the email  
 6 production that was made last week?

7 THE WITNESS: That's correct.

8 MR. SHOREMAN: I want to say for the  
 9 record that Nexus has produced all of its emails  
 10 at this point concerning RLI. So it will be in  
 11 there.

12 MR. HARRIS: I appreciate the  
 13 representation, Mr. Shoreman, but one of our  
 14 30(b)(6) topics was to have somebody confident and  
 15 available to testify to the facts regarding any  
 16 dispute that you contained that RLI didn't give  
 17 authority to and so.

18 MR. SHOREMAN: Where do you see that in  
 19 there? Where do you see that?

20 MR. HARRIS: We can discuss it off the  
 21 record.

22 MS. KATSANTONIS: Yeah, we can discuss

318

320

1 it off the record.

2 MR. SHOREMAN: I want to see where you  
 3 say in here that --

4 MS. KATSANTONIS: Well, I'm going to  
 5 tell you right now because Mr. Donovan is  
 6 asserting that we acted arbitrarily and  
 7 capriciously and that it was a basis for bad faith  
 8 and so if it's a basis for bad faith then we're  
 9 entitled to explore the bases of that.

10 MR. SHOREMAN: Mr. Harris just said  
 11 that there was a specific topic here for backup  
 12 information for disputes.

13 MS. KATSANTONIS: I don't want to waste  
 14 my time on the record.

15 Doesn't that cover it? The fact that  
 16 Mr. Donovan is asserting that it was a basis for  
 17 bad faith?

18 MR. SHOREMAN: It is a basis for bad  
 19 faith.

20 MS. KATSANTONIS: Then let me continue  
 21 my question.

22 MR. SHOREMAN: It doesn't say here, as

1 Mr. Harris just represented, that he must be  
 2 prepared to provide all backup documentation for  
 3 Mr. Sussman's refusal to allow disputes.

4 MS. KATSANTONIS: Mr. -- all the facts  
 5 in --

6 MR. SHOREMAN: If you see in there,  
 7 just point it out to me.

8 MS. KATSANTONIS: We're going to go off  
 9 the record because I'm not going to waste my time  
 10 with this. All the facts and circumstances that  
 11 support his contentions that RLI acted in bad  
 12 faith.

13 MR. SHOREMAN: We have provided --

14 MS. KATSANTONIS: Off the record. Off  
 15 the record.

16 THE WITNESS: Don't go off the record.

17 MR. SHOREMAN: Don't go off the record.  
 18 MS. KATSANTONIS: Then I'm going over  
 19 as long as you take because I'm not going to spend  
 20 my time with your argument.

21 MR. SHOREMAN: I'm saying we provided  
 22 you every email between RLI and Nexus.

1 MS. KATSANTONIS: I don't know that's  
 2 true, Mr. Shoreman, and it doesn't matter.

3 MR. SHOREMAN: And we've provided you  
 4 further emails today.

5 MS. KATSANTONIS: Okay, we're not  
 6 wasting any more time.

7 MR. SHOREMAN: Well, ask a question  
 8 then.

9 Q Mr. Donovan --

10 MR. HARRIS: Note in response --

11 MR. SHOREMAN: Wait, wait, wait, wait.

12 MR. HARRIS: Topic 4, last two Roman  
 13 numeral at -- there's two i's there, which is  
 14 inadvertent, but the last two specifically ask for  
 15 this witness' knowledge and all the facts  
 16 regarding instances where RLI allegedly did not.

17 MR. SHOREMAN: All right. That's all I  
 18 asked for. That's all I asked for. Thank you,  
 19 Mr. Harris --

20 MR. HARRIS: You're welcome.

21 MR. SHOREMAN: -- for being so polite  
 22 and courteous and cooperative.

Transcript of Micheal Paul Donovan, Corporate Designee

81 (321 to 324)

Conducted on March 3, 2020

321

323

1 Vivian, you can take --  
 2 MS. KATSANTONIS: Okay. Reviewing --  
 3 MR. HARRIS: The point for the record  
 4 is that Mr. Donovan is not able to testify to the  
 5 specific facts.

6 MR. SHOREMAN: He can testify. He's  
 7 given you email --

8 MS. KATSANTONIS: I'm adding three  
 9 minutes to my time. Okay. Three minutes added.

10 MR. SHOREMAN: He's produced emails  
 11 today and he's testifying about what he's learned  
 12 from his staff. The idea that he cannot testify  
 13 to this or has not testified to this is entirely  
 14 false.

15 MS. KATSANTONIS: Can we proceed,  
 16 please?

17 MR. SHOREMAN: Thanks to Mr. Harris you  
 18 can.

19 MS. KATSANTONIS: Okay.

20 BY MS. KATSANTONIS:

21 Q Reviewing the email we marked dated  
 22 March 28th, 2018.

322

324

1 Do you have a copy of that?

2 A I'm not sure. Let me see.

3 Q Did I provide that to you?

4 A Also not sure.

5 MS. KATSANTONIS: Off the record.

6 A Which email?

7 Q Wait.

8 A Oh, it's --

9 MS. KATSANTONIS: Wait, wait, wait.  
 10 Sorry.

11 (Donovan Exhibit 16 marked for  
 12 identification and attached to the transcript.)

13 Q I'm sorry, we both needed to stop  
 14 talking.

15 A I understand, Vivian. It's a common  
 16 problem we have, the two of us.

17 MR. SHOREMAN: May I have a copy of  
 18 that. Am I in the doghouse so I don't get a copy  
 19 of it?

20 THE WITNESS: You don't even get copies  
 21 anymore.

22 MS. KATSANTONIS: I threw one at you

1 earlier, if you need a second one there you go.

2 MR. SHOREMAN: Which exhibit is this?

3 16.

4 MS. KATSANTONIS: I'm definitely adding  
 5 four minutes.

6 Q Okay. This is an email between  
 7 Mr. Sussman and Juliana Gutierrez and you're  
 8 copied on this email chain?

9 A I am.

10 Q Okay. And do you see that

11 Ms. Gutierrez advised Mr. Sussman we found an  
 12 invoice under RLI that is disputable, do you see  
 13 that?

14 A Yeah, I'm going to read this real  
 15 quick.

16 Q Have you had an opportunity to review  
 17 this?

18 A I've read Juliana's email which I agree  
 19 with. I'm just reading the top one now. So I've  
 20 read all of the document except this one. Yes,  
 21 I've read it.

22 Q Okay. So Mr. Sussman requested

1 documentation to substantiate Nexus' desire to  
 2 challenge the invoice, right?

3 A It does appear that he did that, yes.

4 Q Right. And Ms. Gutierrez's answer  
 5 didn't provide the backup documentation, right?

6 A I think Gutierrez's answer is based on  
 7 an understanding of these situations and maybe  
 8 Mr. Sussman's isn't. There is -- what would one  
 9 produce, right? So you have an ICE officer who  
 10 remanded the person. There's a remand record,  
 11 right? So --

12 Q You didn't provide that.

13 A No, no, no. Hold on a second. We  
 14 wouldn't necessarily have it but certainly the  
 15 federal government would. So when we say we want  
 16 to file this protest, or this dispute.

17 Q Right?

18 A It's because the government knows that  
 19 he was -- that he was remanded on December 1st and  
 20 that that information is absolutely available to  
 21 the government. So a paragraph that recites those  
 22 facts when the government can verify them may well

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Transcript of Micheal Paul Donovan, Corporate Designee

82 (325 to 328)

Conducted on March 3, 2020

325

327

**1 be enough and we may not have a body receipt on  
2 the person.**

**3 Q** Mr. Donovan, certainly Mr. Sussman's  
4 email says my concern is you haven't provided  
5 anything to substantiate us -- to substantiate or  
6 provide us with backup document.

**7 A We provided the dates.**

**8 Q** And he says --

**9 A And he's asking for a copy of the past  
10 due invoice, we get those from you.**

**11 Q** What evidence are you going to submit  
12 to prove that the individual showed up, right? He  
13 asked for that, right?

**14 A Right. You have the date and the time  
15 and the individuals that were there with them. I  
16 mean, the government certainly would have a record  
17 of his remand.**

**18 Q** Ms. Juliana Gutierrez didn't respond  
19 providing --

**20 A I don't have any response.**

**21 Q** -- what her challenge was, right?

**22 A I don't know if she responded to this**

**1 Q** That's great, Mr. Donovan. So this  
2 letter is what you think constitutes bad faith on  
3 the part of RLI?

**4 A This letter is one --**

**5 Q** Is that corect?

**6 A -- one small example of the mountain of  
7 bad faith that RLI has brought to this deal,  
8 absolutely. You have all the facts in this email  
9 from Juliana Gutierrez, a member of the bar,  
10 right?**

**11 Q** Right.

**12 A You have all the facts and Mr. Sussman  
13 doesn't care. Doesn't care about the fact that  
14 Nexus is going to have to pay the 10,000 versus  
15 the 3400? Why does Mr. Sussman not care? Because  
16 it's not his money. That's bad faith.**

**17 Q** Okay. Thank you.

**18 A You're welcome.**

**19 Q** And with regard to Nexus' financials,  
20 what lines of credit are available to Nexus to  
21 finance its operation other than credit cards?

**22 A We have cash flow assets, we utilize**

326

328

**1 email.**

**2 Q** Right. And Mr. Sussman asked send me  
3 what you're proposing to send to the government,  
4 right? He asked her to do that as well, right?

**5 A I think that Ms. Gutierrez provided  
6 information sufficient in any -- in a layperson's  
7 mind to be able to challenge this for sure. But  
8 certainly sufficient for the government to  
9 understand because there are dates on which this  
10 person was remanded.**

**11 Q** Do you know --

**12 A And what I see is Mr. Sussman being  
13 incredibly unreasonable understanding that we have  
14 the facts and he's just not granting us the  
15 authority to -- to be able to get those facts to  
16 the right person so that we could have that loss  
17 mitigated. This is why our breach rate is so high  
18 with RLI. This email proves it. This is exactly  
19 what we've been dealing with. I'm glad you're  
20 bringing this into the record.**

**21 Q** That's great.

**22 A This is awesome. Thank you.**

**1 our cash flow. We have --**

**2 Q** You mean cash flow from --

**3 A We have an American Express account and  
4 we utilize the American Express account on a  
5 monthly basis.**

**6 Q** Okay. So when you say cash flow you're  
7 talking about payments made by program  
8 participants, right?

**9 A Exactly.**

**10 Q** So the assets that you have, the  
11 revenue streams that you have are payments from  
12 program participants and then you have a credit  
13 card, American Express?

**14 A Well, and the Home -- Homes revenue,  
15 the income revenue.**

**16 Q** Okay. And has -- is the revenue stream  
17 from program participants, has it been consistent  
18 in 2017, '18, and '19, or has it gone up or down?

**19 A The amount of payments that are  
20 collected from program participants has gone up.  
21 I have a KPI here that's the most recent KPI which  
22 I will give you.**

Transcript of Micheal Paul Donovan, Corporate Designee

83 (329 to 332)

Conducted on March 3, 2020

329

321

1 Q Okay, thank you.  
2 A You're welcome.  
3 Q And then -- and you can show me what  
4 those are. What was it for 2019?  
5 A Well, sure, for example this is --  
6 well, the document I have in front of me is 2020.  
7 And so like for February, for example, we're  
8 113 percent to our comp performance in payments  
9 from clients.  
10 So which, you know, makes sense because  
11 as your client base grows your payment base grows  
12 as well.  
13 Q And how, if at all, is the cease and  
14 desist order from California going to impact that  
15 revenue stream?  
16 A Well, good news. I took the time to go  
17 out to California and meet with the folks from the  
18 insurance commissioner's office and we're working  
19 diligently to solve that problem. The good news  
20 is that Libre continues to do business in  
21 California under a modified business model.  
22 Q Until April?

330

332

1 A And we're --  
2 MR. SHOREMAN: Wait.  
3 A You seem excited about this. I'm  
4 actually excited that we're going to be resolving  
5 this and other issues. We are working with  
6 regulators when there are issues and trying to  
7 resolve them, just like we did Washington State.

8 MR. SHOREMAN: Let me just say that you  
9 interjected and said to April. And didn't give  
10 him a chance to answer.

11 MS. KATSANTONIS: I know. I'm going to  
12 ask, you're right. And I apologize.

13 Q You know, the motion to stay, or the  
14 stay order, provides a stay through April,  
15 correct, of 2020?

16 A The cease and desist -- the modified  
17 cease and desist under our old business model  
18 would expire in April, yes.

19 Q Right. And so my question is how is --  
20 do you have an understanding as to how that's  
21 going to -- after April 2020 -- impact the revenue  
22 stream to Nexus?

1  
2  
3  
4  
5  
6  
7

8 MR. SHOREMAN: Let me just interject.

9 What time is the transcript right now? What time  
10 is it on the transcript?

11 THE VIDEOGRAPHER: We're at 5:13.

12 MR. SHOREMAN: Okay. Everything from  
13 5:13 back to like concerning California is  
14 confidential.

15 MS. KATSANTONIS: Oh, sure. Okay. No  
16 problem.

17 And, Mr. Shoreman, just for things  
18 later you want to mark, we can discuss it.

19 MR. SHOREMAN: Okay. Thank you.

20 Q Okay. What about what is the aggregate  
21 amount of Nexus' outstanding liabilities?

22 A The aggregate amount of Nexus'

1 outstanding liabilities in total?

2 Q Uh-huh, yes.

3 A I believe I have a digital copy of our  
4 aging report which I will also produce if I can  
5 get my phone out of my pocket.

6 Q I can provide you with one,  
7 Mr. Donovan, I don't know if that's the same.

8 MR. SHOREMAN: We can go off the record  
9 while Vivian's looking for that and let you know  
10 that Virginia went for Biden.

11 MS. KATSANTONIS: Off the record.

12 THE VIDEOGRAPHER: We're going off the  
13 record at 19:19.

14 (Recess taken.)

15 THE VIDEOGRAPHER: We are back on the  
16 record at 19:21.

17 BY MS. KATSANTONIS:

18 Q What is the current aggregate amount of  
19 Nexus outstanding liability?

20 A It is \$5,250,415.14.

21 Q And from where are you deriving that  
22 information?

Transcript of Micheal Paul Donovan, Corporate Designee

84 (333 to 336)

Conducted on March 3, 2020

	333		335
1 <b>A Our most recent aging report.</b>		1 significant cost when you consider the fact that	
2    Q Okay. And does that include any		2 we're traveling clients and employees, and, you	
3 disputed liability?		3 know, rents. We have offices across the country	
4 <b>A It includes some liability with Buddi</b>		4 where we serve people. So when you're operating a	
5 that is device related, so when those devices are		5 multiunit operation across the United States, it	
6 returned that won't actually be money that's paid.		6 can get very expensive just to run the business.	
7 <b>It's related to the value of the device.</b>		7    Q Does Nexus have any outstanding	
8    Q Okay. Are there any other disputed		8 promissory note liabilities?	
9 liabilities that are not included in that number?		9 <b>A Only insofar as each of our contracts</b>	
10 <b>A We have a balance with – a contested</b>		10 with FCS include a promissory note provision on	
11 or disputed balance with 3M Attenti that's not on		11 the bond indemnification agreement unlike the	
12 here.		12 general indemnity agreement, so, you know, just	
13   Q Uh-huh. And how much is that,		13 parking lot that. Otherwise, no.	
14 approximately?		14   Q Do you know the total of how much Nexus	
15 <b>A I do not – we do not have a bill. I</b>		15 owes on outstanding, like, mortgages, loans, or	
16 wasn't able to place my hands on a bill for		16 other real estate transactions?	
17 Attenti related to what we've – what it is now		17 <b>A I think I might. How exciting.</b>	
18 that we've returned hundreds of devices, right?		18   Q While you're looking for that, does	
19 So it was – it was a, I think a \$2 million		19 McGuireWoods have unpaid invoices outstanding with	
20 balance but we've returned thousands of devices		20 Nexus?	
21 and those are, you know, significant value per		21 <b>A Yes.</b>	
22 device. So I'll have to – but I'll certainly		22   Q How much?	
	334		336
1 find out and I'll update you.		1 <b>A It looks like -- you want an exact</b>	
2 <b>I can give you the amount that we</b>		2 number because I'm going to have to --	
3 currently have but I'll give you the updated one.		3   Q No, roundabout.	
4    Q Does that amount include outstanding		4 <b>A Okay. So roughly the \$220,000.</b>	
5 invoices for bond breaches?		5   Q What about Eckert Seaman?	
6 <b>A So we – we consider -- let me just</b>		6 <b>A Eckert Seaman is about 550,000, but</b>	
7 check something real quick.		7 that's about a month and a half of this litigation	
8 <b>So bond breach liability is not here.</b>		8 cost so that's not a lot at the time.	
9    Q Okay. And what is the aggregate amount		9   Q Does Nexus currently have sufficient	
10 of bond breach invoices outstanding now?		10 assets to satisfy its current liabilities?	
11 <b>A I will get that to you before I leave,</b>		11 <b>A It does.</b>	
12 okay?		12   Q Is Nexus currently without sufficient	
13   Q Okay.		13 liquid assets to pay off its liabilities to Buddi?	
14 <b>A Before you let me go.</b>		14 <b>A It does not.</b>	
15   Q And do you -- other than the bond		15   Q You do not have sufficient liquid	
16 breach invoices, what are Nexus' five largest		16 assets to pay off your liabilities to Buddi?	
17 categories of liability, if you know generally?		17 <b>A My liabilities to Buddi include devices</b>	
18 <b>A You're not going to score me on whether</b>		18 which we wouldn't pay for, we would either return	
19 I rank them in order, right?		19 and then get credit for. So we are able to meet	
20   Q Right?		20 our obligations to Buddi and the arrangements that	
21 <b>A Payroll is a significant cost. GPS</b>		21 we've made with Buddi.	
22 cost would be a significant cost, travel is a very		22   Q Is Nexus currently without sufficient	

Transcript of Micheal Paul Donovan, Corporate Designee

85 (337 to 340)

Conducted on March 3, 2020

337

339

1 liquid assets to pay all outstanding bond breach  
2 invoices?

3 **A We are not without sufficient assets.**  
4 **It's a weird way to ask that question. Let me**  
5 **make sure. We have sufficient assets to pay bond**  
6 **breaches.**

7 Q How do you know you have sufficient  
8 liquid assets to pay all outstanding bond breach  
9 invoices?

10 **A Based on our KPI, our understanding of**  
11 **the revenue that we're collecting, past**  
12 **performance, it is – this company has paid**  
13 **\$11 million plus in bond breaches and we will pay**  
14 **breaches as we need to pursuant to the agreements**  
15 **we have. Just as we always have.**

16 Q But you don't have an understanding as  
17 to what your liquid assets are sitting here today,  
18 correct?

19 **A I don't have the specifics, the level**  
20 **of which I would like and the level of which I'm**  
21 **sure you would like. But I am confident in our**  
22 **ability to meet our liabilities.**

1 **A Various.**

2 (Donovan Exhibit 17 marked for  
3 identification and attached to the transcript.)  
4 Q Yes. And under the indemnity  
5 agreement, paragraph 3C, you understand that RLI  
6 has the right to access the books, records, and  
7 accounts of the indemnitors for examining and  
8 copying them, correct?

9 **A Yes.**

10 Q Okay. And RLI made further demand on  
11 March 3rd, 2017.

12 Do you recall that?

13 **A Further demand for access to books,**  
14 **records, and accounts?**

15 Q Right?

16 **A I don't remember it specifically but**  
17 **I'm sure it happened. There were several requests**  
18 **and conversations about confidentiality, as you**  
19 **may remember. Are we marking this?**

20 Q Yes, thank you.

21 **A It feels warmer so thank you.**

22 **Appreciate it. I was getting a little worried, I**

338

340

1 Q Do you have an order of magnitude as to  
2 what your current liquid assets are?

3 **A Well, I answered pursuant to the**  
4 **balance sheet earlier, and I think that I'm going**  
5 **to reassert that answer because it's based on the**  
6 **documents that I have, right? So I read you the**  
7 **assets based on the balance sheet, the 2019**  
8 **balance sheet.**

9 Q But you also said that that balance  
10 sheet was not accurate.

11 **A I said that it was being reconciled,**  
12 **right? We were talking about assets. You asked**  
13 **me about assets –**

14 Q You can't -- you can't rely on that  
15 balance sheet, can you?

16 **A I don't rely on that balance sheet to**  
17 **tell me what – whether I can meet our liabilities**  
18 **or not. You asked a very base – a very specific**  
19 **question and I'm providing a very specific answer.**

20 Q Okay. RLI throughout -- since 2016 to  
21 the present, has made various requests for access  
22 to Nexus' books, records, and accounts, correct?

1 **was really cold.**

2 Q So this is a March 3rd letter written  
3 to you, or to Nexus, from RLI, correct?

4 **A That is correct.**

5 Q And in this, RLI expresses concerns,  
6 some of which they summarize below, right? And we  
7 went through this letter in your deposition last  
8 week, right?

9 **A Did we?**

10 Q Yes.

11 **A Okay.**

12 Q And do you recall that RLI requested to  
13 review financial documents and other documents  
14 related to the immigration bond program in this  
15 letter, correct?

16 **A That is in the letter, yes, ma'am.**

17 Q And RLI advised that it appreciated  
18 your attention -- it appreciated your attention to  
19 this urgent matter and asked for a response by  
20 March 10th, right?

21 **A That seems to be correct, yes.**

22 Q Okay. And on March 6th, RLI followed

Transcript of Micheal Paul Donovan, Corporate Designee

86 (341 to 344)

Conducted on March 3, 2020

341

343

1 up with an email to Nexus, again requesting a  
2 response to the letter of March 3rd, correct?

3 Do you recall that?

4 **A Do you have that?**

5 Q Yep?

6 **A So I can review it. Do you want to**  
7 **enter it?**

8 Q Sure.

9 **A Okay.**

10 (Donovan Exhibit 18 marked for  
11 identification and attached to the transcript.)

12 Q And RLI requested a response by  
13 March 10th, again, in their email of March 6th,  
14 correct?

15 **A Yeah. I think this is the Friday to**  
16 **Monday, right? This is what we had talked about**  
17 **in my prior deposition. So if you sent an email**  
18 **on Friday and you sent a follow-up email on**  
19 **Monday. I believe that March 6, 2017 was a**  
20 **Monday. I believe that the first email came in on**  
21 **a Friday, which from a workday perspective is**  
22 **literally the next day.**

342

344

1 Q But my question is in the March 6th  
2 email that he is again reiterating his request for  
3 response by March 10th, right, by the Friday?

4 **A By Friday. It mentions Friday.**

5 Q Yeah?

6 **A So that would be --**

7 Q March 10th?

8 **A Yeah.**

9 Q And Nexus did not respond, correct?

10 **A I'm not sure if there was a response.**  
11 **I don't know if I spoke to Ira or not after that.**  
12 **I know I spoke to him on the phone. I think the**  
13 **first letter references our phone call.**

14 Q You don't recall that?

15 **A I don't know that anyone spoke to him**  
16 **between the March 6th letter and the 10th. I**  
17 **certainly don't recollect speaking to him myself**  
18 **personally. I have no record of anybody in the**  
19 **company doing it.**

20 Q Right. We talked about it at your  
21 deposition, right? There was no response so RLI  
22 issued a March 13th letter, correct?

1 **A What I'm saying is I didn't find any**  
2 **response so I'm confirming that.**

3 Q Thank you.

4 **A Of course. I'm assuming we're marking**  
5 **this.**

6 Q Yes?

7 **A I'm assuming you'll tell me we're not**  
8 **if we're not.**

9 Q Thank you.

10 **A You're welcome.**

11 (Donovan Exhibit 19 marked for  
12 identification and attached to the transcript.)

13 Q So this March 13th, 2017 we talked  
14 about this in your deposition as well, this was a  
15 demand for bond discharge or collateral?

16 **A Yes.**

17 Q Okay. And do you recall that in this  
18 letter, RLI advised you that it -- that Nexus had  
19 not responded, correct?

20 **A I want to review this real quick, it's**  
21 **only two pages and I don't -- you know, the other**  
22 **email I remembered but I want to make sure -- this**

1 quotes the GIA so I want to make sure I understand  
2 what it's saying.

3 Q Okay. So Nexus advised in this letter  
4 that, first of all, it had received no response at  
5 all from Nexus, correct?

6 **A That's what it says.**

7 Q Right. And it also advised that Nexus  
8 had stopped communicating altogether with RLI's  
9 claim personnel, correct?

10 **A Yeah. But I would caution you. It's**  
11 **March 3rd through March 13th. We're talking about**  
12 **a 10-day window. I think that given the fact that**  
13 **RLI did business with us for a year and**  
14 **Mr. Sussman never bothered to talk to us having**  
15 **the communication go from where it went on**  
16 **March 3rd to March 13th is, I think, and**  
17 **additional element of, you know, question of RLI's**  
18 **behavior.**

19 Q Okay. Well, RLI's advising you that  
20 there has been no communication with RLI's claim  
21 personnel, correct?

22 **A That's what it says.**

Transcript of Micheal Paul Donovan, Corporate Designee

87 (345 to 348)

Conducted on March 3, 2020

345

347

1 Q All right. And that there had been  
2 increased bond breach notices, correct?

3 A That's what it says.

4 Q And including past due notices,  
5 correct?

6 A That's what it says.

7 Q And that it had received some  
8 contradictory representations regarding past and  
9 ongoing resolution of bond claims, correct?

10 A I have no idea what that's referring  
11 to.

12 Q Well, but you see it says that's RLI's  
13 contention, right?

14 A Right. RLI's contention in this  
15 document is ridiculous. I mean, it misstates the  
16 indemnity agreement, misstates the — it's a  
17 ridiculous demand but I don't know what it was  
18 referring to in that regard, no.

19 Q Okay. Where --

20 A Like, for example, he says in the third  
21 paragraph, "Please note that under this provision,  
22 RLI is expressly entitled to demand and receive

346  
1 from Nexus collateral an 'sufficient to cover all  
2 exposure.'"

3 That's not what it says. It says  
4 amount sufficient to cover all exposure under such  
5 bond or bonds, what bonds, the ones that create a  
6 liability for the surety, a claim.

7 Q Mr. Donovan?

8 A Those would be breaches, right?

9 Q Okay?

10 A So that's not \$10 million. We've never  
11 had \$10 million in breaches with RLI and we  
12 certainly didn't when this demand was made.

13 Q Mr. Donovan, you -- I don't need your  
14 testimony with regard to the -- let me just --

15 A It's my testimony, Ms. Katsantonis.

16 Q No, no, no. Let me just -- stop that.

17 A I'm sorry.

18 Q Excuse me, it's me, it's not my  
19 question.

20 A I mean.

21 Q No, I'm rephrasing my question.

22 A I got you. Okay. I thought you were

1 telling me stop it. I was like wait a second.

2 Q I'm just saying under this letter RLI  
3 advised you, right, that, again, that they  
4 believed Nexus was a material breach, right?

5 A It says that, yeah.

6 Q And that Nexus had stopped  
7 communicating, correct?

8 A Over a period of 10 days it appears  
9 that. It doesn't specify what the communication  
10 period was. This letter started on March 3rd and  
11 end on March 13th in a full demand. So it's 10  
12 days. I don't know. We had a yearlong working  
13 relationship and in 10 days everything blows up.  
14 It doesn't make any sense.

15 Q And RLI advised that they're receiving  
16 bond claims at an alarmingly increasing rate,  
17 correct?

18 A Yes, but this hadn't lost any money and  
19 still haven't.

20 Q Okay. And do you know how many bond  
21 breaches or bond breach notices RLI had received  
22 as of this date?

348

1 A All I can reference is what Mr. Sussman  
2 writes in his letter. I can pull -- he references  
3 I think what's fixed. But I don't know.

4 MS. KATSANTONIS: I'm going to mark  
5 this.

6 (Donovan Exhibit 20 marked for  
7 identification and attached to the transcript.)

8 Q It's an email dated March 15th from you  
9 to Mr. Sussman.

10 A Yes.

11 Q Okay. And is that your email, correct?

12 A It is. It's an email I wrote when I  
13 was under the impression that Laura Piispanen was  
14 honest in her email communications. I later  
15 regretted that.

16 Q Mr. Donovan, you stated in your  
17 contemporaneous email of March 15th, 2017, that  
18 you owed RLI an apology, correct?

19 A That's right. I had relied on  
20 Laura Piispanen's representations about  
21 communication with our risk management department  
22 which I acknowledged to Ira was unacceptable. I

Transcript of Micheal Paul Donovan, Corporate Designee

88 (349 to 352)

Conducted on March 3, 2020

349

351

1 later learned that there were communications that  
 2 Ms. Piispanen wasn't necessarily fully honest in  
 3 her emails and I began to see a -- the fact that  
 4 my team had been trying to communicate and the 10  
 5 days between March 3rd and March 13th and the  
 6 absolute, you know --

7 Q Mr. Donovan?

8 A It doesn't even make any sense what RLI  
 9 did from March 3rd to March 13th.

10 Q Mr. Donovan, in RLI's letter they  
 11 weren't talking about a 10-day period, right?  
 12 They didn't cite a time period of when there had  
 13 been a lack of communication, right?

14 A The 10-day period, Ms. Katsantonis, is  
 15 all about what you've put into the record. You  
 16 said there's an email on March 3rd, all the way up  
 17 to March 13th and there are several  
 18 commmunications there. And what I'm saying is we  
 19 had a yearlong relationship where everything was  
 20 fine.

21 Q Mr. Donovan?

22 A And when RLI stopped receiving daily

350 1 premium everything blew up within 10 days. It  
 2 doesn't make any sense.

3 Q Let me ask you a question. In your  
 4 March 15th email, you're agreeing at this time  
 5 that there had been no communications between your  
 6 branch manager and Laura since January 31st,  
 7 correct?

8 A That's what I -- I relied on those  
 9 representations, yes.

10 Q Whose representations?

11 A Laura's representations.

12 Q And when did Laura tell you that she  
 13 had no communication since January 31st?

14 A Laura did communicate to me that she  
 15 had no communications and I'm speaking personally  
 16 here but I did have a conversation with Laura  
 17 around and about that time --

18 Q So you're --

19 A -- where she did tell me that she did  
 20 not have communications with our --

21 Q Your investigation was just to ask  
 22 Laura?

1 A That's correct.

2 Q And you didn't ask anybody else.

3 A I assume that Laura and Ira were being  
 4 honest.

5 Q Okay.

6 A My mistake.

7 Q Okay. And so are you saying that --  
 8 well --

9 A I'm saying that my team says something  
 10 different than your team -- than your client's  
 11 team does.

12 Q You don't have a letter from your team  
 13 saying oh, my gosh, I did further investigation  
 14 and we had been in communication -- communicating  
 15 with you, right?

16 A Because after this we, the relationship  
 17 with RLI spiraled. We started having  
 18 conversations about providing documents, access to  
 19 records. We wanted to provide --

20 Q Let's just say no --

21 A -- access to our records.

22 Q We have limited time, Mr. Donovan.

352 1 A We wanted to provide access to our  
 2 records, we asked you to sign a confidentiality  
 3 agreement, we asked RLI to sign a confidentiality  
 4 agreement.

5 Q Mr. Donovan?

6 A We are now providing records pursuant  
 7 to the court order --

8 Q All right, Mr. Donovan, please just  
 9 answer my question or --

10 A You could have agreed to the  
 11 confidentiality agreement, we could have had these  
 12 documents shared in 2017. That's my point.

13 Q Okay. Mr. Donovan.

14 So you also provided some data in  
 15 response to some of the bond breach notices that  
 16 had been received, right?

17 A It appears that way, yes.

18 Q So you agree that RLI was not  
 19 unreasonable in its assertion that Nexus had  
 20 stopped communicating, right?

21 A When I believed Ira and Laura's  
 22 representations, yes.

Transcript of Micheal Paul Donovan, Corporate Designee

89 (353 to 356)

Conducted on March 3, 2020

353

1 Q Okay. And you agree that RLI was not  
 2 wrong that Nexus did not respond to its March 3rd  
 3 letter, correct?

4 MR. SHOREMAN: Objection. Question  
 5 has --

6 A No, I -- I'm sorry. We're talking  
 7 about 10 days, right? I was apologizing for a  
 8 lack of communication that I was represented -- it  
 9 was represented to me occurred. And so that's  
 10 what I apologized for. And you know what, that's  
 11 what professionals do. You have a -- there is  
 12 a -- there is a problem here with communication.  
 13 I now believe that the problem lied with as much  
 14 as with your client as it did with my team. But  
 15 you know, a professional says hey we're going to  
 16 restart this. Let's go. And so what I did is I  
 17 said Ira, look, I'm sorry if you're upset. I'm  
 18 sorry that this happened but let's figure out a  
 19 way to move forward. That's what professionals  
 20 do.

21 Q All I'm asking you, Mr. Donovan, is at  
 22 the time you agreed it was not unreasonable that

355  
 1 Q And you also agree that there are bond  
 2 claims being sent by DHS during this time frame in  
 3 January, February, and March of 2017?

4 A Sure. That's the nature of the --

5 Q Okay.

6 A -- the program, some people are going  
 7 to breach.

8 Q So you made another comment and I want  
 9 to make sure I understand it. Are you saying that  
 10 RLI did not communicate with Nexus with regard to  
 11 the bond program throughout 2016?

12 A I'm saying that none of the concerns  
 13 that RLI raised in March of 2017 were raised to us  
 14 during the process of. There was never a question  
 15 of whether we would have to post \$10 million in  
 16 collateral. As you well know from my prior  
 17 deposition, RLI had asked for 1.25 million in  
 18 collateral or find another surety. We did  
 19 everything RLI asked us to do every step of the  
 20 way. The most ridiculous thing about this  
 21 litigation is we continue to do everything RLI ask  
 22 us to do and yet we continue to be hit for it,

354

1 Nexus -- for RLI to assert that Nexus had stopped  
 2 communicating. You agreed with that, correct?

3 MR. SHOREMAN: Asked and answered.

4 A Based on the miscommunication I had  
 5 received from Laura, yes. And I now know that  
 6 wasn't true.

7 Q And you also agree that RLI was not  
 8 wrong in stating that Nexus had not responded to  
 9 it's critical letter dated March 3rd?

10 A I don't think RLI was wrong in saying  
 11 that we didn't respond within 10 days. I don't  
 12 think it's reasonable for RLI to have expected us  
 13 after doing a year of business and never asking a  
 14 question, never caring to call, never caring to  
 15 send a letter.

16 Q Okay?

17 A We get this many misses in this short a  
 18 period of time. I think that's ridiculous. I  
 19 think it's true that we didn't respond within the  
 20 10 days of the escalated emails but I don't think  
 21 it's reasonable to expect that we would respond  
 22 the way that RLI expected.

356  
 1 ridiculous.

2 Q Mr. Donovan, just answer my question.

3 A I did.

4 Q Is it your testimony that RLI -- I  
 5 mean, did RLI communicate to Nexus regarding the  
 6 bond program and breaches throughout 2017?

7 MR. SHOREMAN: Objection. His  
 8 testimony is what he just testified to.

9 A Not at all in the same manner that they  
 10 communicated within the 10-day window that you've  
 11 described in March, Ms. Katsantonis, no.

12 Q I'm asking you did they?

13 A It was completely inconsistent.

14 Q Did RLI ask you questions about the  
 15 status of various bonds and payments in 2016?

16 A Sure. But they never requested  
 17 \$10 million. Never tried to demand until -- they  
 18 asked for 1.25 million and a continuation of the  
 19 program or that we find another surety partner.

20 Q Okay. So you think that was a  
 21 reasonable request?

22 A We found another surety -- whether it's

Transcript of Micheal Paul Donovan, Corporate Designee

90 (357 to 360)

Conducted on March 3, 2020

357

359

**1 reasonable or not I complied with it. I found  
2 another surety partner.**

3 Q Did you think that was --

4 A And specifically --

5 Q Mr. Donovan-

6 A - I was told by RLI that if I found  
7 another surety partner I wouldn't have to pay the  
8 \$1.2 million.

9 Q We'll get to that in a moment.

10 A So I found another surety partner.

11 Whether it's reasonable or not that's what RLI  
12 requested and that's what I did.

13 Q So is it your testimony that the  
14 request for collateral in the amount of a million  
15 250 was an agreement between you and RLI?  
16 A No. And you know it wasn't an  
17 agreement, Ms. Katsantonis. It's not even  
18 intellectually honest. You know that I'd never  
19 agree to that. You know that I chose to replace  
20 the surety. And it's questions like that, quite  
21 frankly, in this deposition, Ms. Katsantonis, that  
22 make me think you're trying to confuse the record.

358

360

**1 It's not what I said and with all due respect it's  
2 not appropriate.**

3 Q I'm trying to understand your  
4 testimony, Mr. Donovan.

5 MR. SHOREMAN: No, you're not. You're  
6 asking him is it your testimony.

7 A You're trying to misrepresent my  
8 testimony and I'm offended by it.

9 MR. SHOREMAN: Me too.

10 Q Okay.

11 A And it's not funny, by the way.

12 Q Well, I need to understand what you  
13 think the agreement was.

14 A Well, I need to understand why you  
15 think that's funny. It's not funny.

16 Q What do you believe is the agreement on  
17 collateral?

18 A What do I believe is the agreement on  
19 collateral?

20 Q Between RLI and Nexus, what was the  
21 agreement?

22 A \$250,000 to -- read it. 500,000

**1 originally, 250,000 modified by email. Read it,  
2 it's there.**

3 Q Okay. So that email in which  
4 Mr. Sandoz sent you an email for 250,000  
5 collateral that is your contention that that is  
6 the agreement between RLI and Nexus for  
7 collateral; is that correct?

8 A That's correct. I believe that under  
9 the general indemnity agreement when there is a  
10 final claim on a bond, that we have to pay it.

11 Q Okay. And on what date did you make a  
12 payment of any of that collateral pursuant to the  
13 agreement between RLI and Nexus?

14 A So I've answered this question in my  
15 personal deposition. We're going to go back to  
16 this? I mean. I can refer you to that answer.

17 Q Do you have a date?

18 A I told you that I believe that we made  
19 a \$50,000 payment. We discussed extensively the  
20 fact that I can't point to it in the records. We  
21 know that there were apportioned commissions that  
22 were supposed to be received by Mr. LiMandri that

**1 Mr. Sandoz apportioned to the collateral. We have  
2 asked RLI to tell us how much money that is, RLI  
3 has refused to tell us, so I don't know.**

4 Q Under Mr. Sandoz's agreement you were  
5 to provide a \$50,000 payment on June 15th and  
6 July 15th, right?

7 A And the email agreement? I believe  
8 that's correct; I'm not sure.

9 Q Right. And so do you have any evidence  
10 or documents to support the fact that you made any  
11 of those \$50,000 payments?

12 A I don't.

13 Q Okay. And getting back to the  
14 contention with regard to the 2016 communications  
15 between RLI and Nexus --

16 A Well, and --

17 Q -- isn't it true --

18 A I think it's important to note that you  
19 asked me about the communications with RLI. And  
20 the communications with RLI between March 3rd and  
21 March 13th are very different than any  
22 communication -- I mean, you're suggesting why

Transcript of Micheal Paul Donovan, Corporate Designee

91 (361 to 364)

Conducted on March 3, 2020

361

1 didn't – where was the \$50,000 check pursuant to  
2 Mr. Sandoz's email.

3 What I'm suggesting is that RLI's  
4 communication with Nexus was completely  
5 inconsistent prior to its stopping doing business  
6 with Nexus and after. And after being the  
7 March 3rd, March 6th, March 13th responses.

8 Q Okay. So let me ask you, prior to the  
9 March 3rd letter, okay, wasn't RLI sending  
10 communications to Nexus asking for things like  
11 copies of appeals, copies of checks, copies of  
12 documents evidencing satisfaction of bond breach?

13 A That would be the normal course of  
14 business and we were providing those things.

15 Q So is the answer yes?

16 A Yes. And we were providing those  
17 things, right.

18 Q And didn't Mr. Sandoz come visit your  
19 offices twice in 2016 to understand better the  
20 process and procedures?

21 A He did, and he was very, you know,  
22 wonderful to work with?

363  
1 A Sure. But part of that is part of our  
2 problem, right? Because you get those, right? So  
3 if like an invoice is canceled, your client gets  
4 it. So your client demanding it from us is silly  
5 because we need to get it from your client.

6 Q And wasn't RLI constantly -- or  
7 consistently asking for paperwork on appeals and  
8 the list of bonds that had been appealed?

9 A And I think we were consistently  
10 providing that information.

11 Q So the answer's yes, correct?

12 A Correct.

13 Q All right. And this is all in 2016  
14 prior to the March 2017 letter, correct?

15 A Right.

16 Q Okay. And so in your amended  
17 counterclaim, and you can look at it if you'd  
18 like, paragraph 76, when you state, "from  
19 January 1st, 2016, to December 22nd, 2016, RLI did  
20 not ask for any communication or update on the  
21 status of the immigration bond."

22 That's not true, correct?

362

1 Q And didn't he ask for a packet of  
2 documents summarizing the program and the notices  
3 in 2016?

4 A He may have.

5 Q Okay. And wasn't RLI constantly  
6 requesting phone calls and communications  
7 regarding the bond breaches?

8 A Constantly?

9 Q Uh-huh.

10 A I think our breach team was  
11 communicating with the RLI team. I think that  
12 there were consistent communications. I think  
13 there were consistent communications back and  
14 forth based on the records that I've reviewed.

15 Q Right. And Nexus -- and RLI was asking  
16 about if a claim's rescinded, show us the  
17 documents to support that, correct?

18 A If a claim is rescinded?

19 Q Yeah.

20 A What do you mean?

21 Q If an invoice has been paid or if an  
22 invoice has been canceled they were --

364  
1 A Can I see that?

2 Q Sure. I have it here somewhere.  
3 That's not it. It has a little sticker on it.

4 A If I – it's interesting, Vivian, if I  
5 draft a document, I can specifically remember.  
6 But if it's drafted by people and I read it I  
7 don't remember it –

8 Q I'm the same way.

9 A – unless I see it in front of me. You  
10 know what I mean?

11 Q Yep.

12 A But if I wrote it, I can point letter,  
13 line, page number, you know.

14 Q I know exactly.

15 A I kind of figured you would.

16 Q Oh, here we go.

17 A Thank you.

18 Q Sure.

19 A What paragraph did you say?

20 Q 76.

21 Okay. Did you review that paragraph?

22 A I have, yes.

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Transcript of Micheal Paul Donovan, Corporate Designee

92 (365 to 368)

Conducted on March 3, 2020

1 Q So that's an inaccurate statement,  
2 correct?  
3 A No, I don't think it's inaccurate.  
4 Q Okay. Why is that an accurate  
5 statement?  
6 A Because right in the context of the  
7 communications in March, what my understanding of  
8 this is to say is that RLI, because we had  
9 communications -- we had normal communications  
10 before claims personnel -- the communication from  
11 Mr. Sussman obviously is elevated communication  
12 from RLI of a very direct and concerned nature.  
13 So I think that when -- when this is  
14 drafted -- forgive me, I didn't draft it -- but  
15 when I read it, I think that's -- that was  
16 certainly what I understood.  
17 As I read it now, that's what I'm  
18 thinking. Which is it's an inconsistency in  
19 communication. It isn't to say that we didn't  
20 have communications about normal day-to-day stuff.  
21 It is to say that the types of questions and  
22 concerns that were raised in the March 3rd, March

366  
1 6th, March 13th communications were new except for  
2 the references herein about Mr. Sandoz sending an  
3 email on December 22nd. I think that's what it  
4 does.

5 Q And Mr. Sussman did have communications  
6 in 2016 with Nexus, as we saw, for example, on his  
7 correspondences back and forth with Juliana?

8 A Oh, sure. Yeah, I think, again, it's  
9 relative to the type of communication. And to the  
10 extent that that's not artfully communicated in  
11 that paragraph, that's unfortunate. But it is  
12 related to the type of communication.

13 Q Okay. And you may recall this from  
14 your deposition last week as well. Isn't it true  
15 that RLI advised you back in October, but  
16 certainly by November, of 2016, that it would no  
17 longer be issuing bonds in 2017?

18 A While you were asking your question, I  
19 thought I heard a child's voice over in the  
20 corner, I don't know what that was, but it really  
21 freaked me out, and I did not hear the rest of  
22 your question. So can you please repeat it; I'm

367  
1 sorry.  
2 Q We talked about this in your last  
3 deposition, I just want to confirm.  
4 In October of 2016, certainly by early  
5 November of 2016, RLI had advised you that it will  
6 no longer be issuing bonds for -- at the request  
7 of Nexus for immigrants, correct?

8 A No. They communicated to us that we  
9 could elect to pay a certain amount of money as  
10 collateral to continue the program or we could  
11 find another surety.

12 Q Prior to that, though. Even then I  
13 know -- but they told you at all times, starting  
14 at least in the beginning of November, if not  
15 sooner, that RLI was not planning to continue to  
16 write immigration bonds at the request of Nexus?

17 MR. SHOREMAN: Objection. Objection.  
18 Who's "they"?

19 Q RLI advised you prior -- at the latest,  
20 in early November, 2016, that RLI would not be  
21 issuing further bonds at the request of Nexus in  
22 the coming year, in 2017?

368  
1 A Well, the only problem with that is  
2 that they expressly said that they would continue  
3 to write bonds for an indeterminate period of time  
4 or we could pay the \$1.2 million in collateral.  
5 And I believe that one of your witnesses testified  
6 to that as well, specifically.

7 Q Okay. Let me just ask my question  
8 again, just answer.

9 Is it your testimony that RLI did  
10 not -- I mean, I just want to be clear.

11 A No, sure, please.

12 Q Didn't RLI advise you in early  
13 November 2016, that RLI was going to stop issuing  
14 immigration bonds at the request of Nexus in 2017?

15 A My understanding was that we had an  
16 either/or provision. We could pay \$1.25 million  
17 in collateral or we could find an alternative  
18 surety for future posting.

19 We elected to find an alternate surety  
20 for future posting. We did that. And we stopped  
21 writing with RLI by February 27th, 2017, as  
22 directed, either pay the 1.25 million or find

Transcript of Micheal Paul Donovan, Corporate Designee

93 (369 to 372)

Conducted on March 3, 2020

369

1 another surety. We found another surety and three  
2 days later I get this letter from Ira.

3 And I think that's bad faith.

4 THE WITNESS: Hey, can I get some more  
5 coffee? Is that at all possible? I just don't  
6 want to disconnect.

7 MR. SHOREMAN: Is there a question  
8 pending?

9 MS. KATSANTONIS: No.

10 MR. SHOREMAN: I just want to consult  
11 with my client.

12 MS. KATSANTONIS: All right. Let's go  
13 off the record.

14 THE VIDEOGRAPHER: We are going off the  
15 record at 20:01.

16 (Recess taken.)

17 THE VIDEOGRAPHER: We are back on the  
18 record at 20:14.

19 BY MS. KATSANTONIS:

20 Q Okay. Before we took a break I was  
21 asking you whether or not RLI communicated to you  
22 in early November its intention to stop issuing

371  
1 A I mean, nothing in the agreement  
2 compelled them to continue posting bonds. I think  
3 the fact that they continued posting bonds was a  
4 sign that the program was working.

5 Q And that right of RLI's was not  
6 contingent upon you finding someone else to write  
7 bonds, correct?

8 A Sure. I mean, yeah, they could have  
9 stopped writing at any point in time.

10 Q Right.

11 A The fact that they didn't shows that  
12 they appreciated the program until they didn't.

13 Q Right. But they could stop writing  
14 regardless of whether or not you provided  
15 additional collateral?

16 A Sure. And so the fact that they  
17 didn't, I think is a —

18 Q Let's mark this.

19 A Mark it?

20 MR. SHOREMAN: Thank you.

21 (Donovan Exhibit 21 marked for  
22 identification and attached to the transcript.)

370

1 immigration bonds in the upcoming 2017 year?

2 A And my understanding of that is they  
3 communicated an either/or provision; that we could  
4 either find a new surety as of February 27, 2017,  
5 or we could post \$1.25 million in collateral with  
6 them. That was my understanding. And we chose to  
7 find a new surety partner.

8 Q But didn't they tell you at all times  
9 that they were going to stop issuing immigration  
10 bonds in 2017, whether it be in January or  
11 February?

12 A My understanding was that we could --  
13 if we had posted the collateral, we could have  
14 posted for an indeterminate amount of time. I'm  
15 not being clear. I mean, that was my  
16 understanding.

17 Q Okay. So --

18 A So based on that understanding, also  
19 understand, Ms. Katsantonis, that they could have  
20 canceled -- they could have stopped posting bonds  
21 at any time.

22 Q Right.

372  
1 Q So this is an email dated November 8th,  
2 on the bottom, Mr. Sandoz to you. And he was  
3 requesting a conference call, and he said, "It's  
4 related to transitioning the program to a new  
5 surety and any progress made in that regard and  
6 thoughts we have as the program winds down."

7 Do you see that?

8 A I do.

9 Q Okay. So do you recall in early  
10 November RLI had advised that it was planning on  
11 not issuing further immigration bonds in 2017?

12 A So, yes. I mean, that was part of our  
13 conversation as to whether or not we continued  
14 with RLI either posting collateral or if we moved  
15 to a new surety.

16 But I do remember this communication,  
17 and I think I was clear with Mr. Sandoz that, you  
18 know, we would prefer to find a new surety than  
19 post \$1.25 million.

20 Q Okay. And looking at paragraph 86 of  
21 your amended complaint.

22 A Uh-huh. I'm glad I got a copy of that.

Transcript of Micheal Paul Donovan, Corporate Designee

94 (373 to 376)

Conducted on March 3, 2020

373

375

1 Q It states, "Without warning or  
2 explanation, RLI declared on February 28th, 2017,  
3 that it would no longer issue immigration bonds."

4 That's not an accurate statement,  
5 correct?

6 A Yeah, I think that -- hold on a second.  
7 I think that could have been more artfully  
8 written. I think that it is -- while certainly  
9 RLI's decision, you know, was February 27th, that  
10 I think was the last day. But, you know, I think  
11 that, obviously, there is communication between me  
12 and RLI, meaning Dave Sandoz, about finding a new  
13 surety. So we did, obviously. And the record is  
14 clear that those communications occurred.

15 Q Right. And in fact, back in at least  
16 December of 2016, RLI was advising you of its plan  
17 to cease writing bonds by February of 2017, right?

18 A Absent the payment of collateral per  
19 their request, yes.

20 Q Well, either way. They were telling  
21 you about the February 2017.

22 A Certainly we were having conversations

1 so I don't know what the balance is.

2 Q Why would Mr. LiMandri post Nexus'  
3 collateral?

4 A Well, it was your client's idea, and we  
5 reviewed the email in my deposition, you may  
6 remember, your client's idea was to take -- to use  
7 those commissions, as it were, that were owed to  
8 Mr. LiMandri for collateral, I think, because they  
9 were owed to Mr. LiMandri at the end of the year.  
10 Mr. Sandoz had indicated that they would -- that  
11 RLI would be refunding all of the collateral at  
12 the end of year.

13 So I think -- I don't know. You'd have  
14 to ask Mr. Sandoz. I understand he's scheduled  
15 for deposition this week.

16 Q Well, I'm just trying to ask you. Did  
17 you have any -- right, it's not a payment that  
18 Nexus provided, right? Any --

19 A What do you mean?

20 Q -- collateral based on this commission  
21 to Mr. LiMandri --

22 A No. I'm not suggesting -- I'm not

374 1 about it, absolutely.

2 Q Okay.

3 MR. SHOREMAN: I'll note for the record  
4 that the amended counterclaim, Exhibit 21, does  
5 not appear to be verified and was prepared by  
6 counsel.

7 MS. KATSANTONIS: Well, I believe,  
8 Mr. -- we won't argue the point here, during the  
9 deposition.

10 MR. SHOREMAN: Okay.

11 THE WITNESS: She reserves the right to  
12 argue all the time.

13 Q With regard to collateral, do you have  
14 any evidence that Nexus at any time prior to  
15 March 13th, 2017, sent a collateral payment to  
16 RLI?

17 A Yes, of sorts. I have a communication  
18 from Mr. Sandoz saying that certain commissions  
19 related to the immigration bond program that were  
20 due to Mr. LiMandri were being credited to the  
21 collateral account. I do not know how much that  
22 was, and RLI has never responded with a balance,

1 suggesting that RLI should have made that offer.

2 I'm saying RLI did. I have representations of the  
3 offer in writing, but no idea of how much it is.

4 You asked me if I had any evidence.

5 And I said, "Yes," and I referenced that email.  
6 I'm not suggesting that it was proper. I'm  
7 just -- or right or the best idea -- I'm just  
8 suggesting that it was an email, I have it, and  
9 you've seen it.

10 Q I understand. What I'm asking you is  
11 that any commissions that you think should be  
12 credited that were due to Mr. LiMandri's --

13 A Are absolutely not due to me.

14 Q -- are not payments that Nexus made,  
15 correct?

16 A We should never receive commissions, so  
17 I agree. But my understanding was that based on  
18 what RLI had represented, that those monies were  
19 going to be placed in that collateral account and  
20 then, I presumed, paid to Marco LiMandri as the  
21 contract that your client had with him would have  
22 provided for.

Transcript of Micheal Paul Donovan, Corporate Designee

95 (377 to 380)

Conducted on March 3, 2020

377

379

1 Q You don't have any writing of  
 2 Mr. LiMandri agreeing to post any collateral on  
 3 behalf of Nexus, right?

4 A No. But I do have your -- your client  
 5 saying this is what we're going to do, and that's  
 6 in an email and you've seen it. Your client has  
 7 refused to tell us what that email means --

8 Q Mr. Donovan --

9 A -- and how much money was apportioned  
 10 to collateral.

11 Q -- I'm just trying to understand that  
 12 you're talking about portion of the collateral  
 13 coming from Mr. LiMandri who has no contractual  
 14 basis with you to pay collateral to RLI on Nexus'  
 15 behalf, right?

16 A I'm talking --

17 MR. SHOREMAN: Objection. This was  
 18 asked and answered. Secondly, he testified it was  
 19 your client's idea.

20 MS. KATSANTONIS: Doesn't matter.

21 A But it was your client's idea. And  
 22 the --

1 Q That's not my question. My question is  
 2 just do you have any agreement in writing by  
 3 Mr. LiMandri to post collateral on behalf of  
 4 Nexus?

5 A No, of course not.

6 Q Okay.

7 A It's not my collateral -- it's not my  
 8 commission. It's not my money.

9 Q Exactly.

10 A It is your client who suggested that it  
 11 was being posted for collateral purposes.

12 Q All right. So --

13 A Your client is the one that said that  
 14 that money was being posted, not me. I didn't ask  
 15 for it, your client offered it.

16 Q All right. And do you have any --

17 A You sent me the email.

18 Q -- writing in which Mr. LiMandri  
 19 accepted the term to provide collateral through  
 20 his commissions on behalf of Nexus?

21 A No. I believe Mr. LiMandri took some  
 22 issue with you not paying his commissions, as I

1 understand it.

2 Q Okay. And you have no evidence that  
 3 Nexus, at any time before March 13th, 2017, sent a  
 4 collateral payment to RLI?

5 A I do not have the documentation of a  
 6 check tendered to RLI, no.

7 Q Right. You don't have check, wire, or  
 8 any documentation to show that Nexus has sent a  
 9 collateral payment to RLI?

10 A That's correct. I do not have that  
 11 detail.

12 Q Okay. Isn't it true that --

13 A Yeah, you've already covered it.

14 Moving on. Don't ask that. You'll be thinking  
 15 tonight, you'll be like, "Man, I wish I would have  
 16 asked that. That was the one place we didn't go  
 17 where we should have."

18 And Chris will be like, "I told you  
 19 that."

20 Your sugar cookies are really good. I  
 21 mean, they're okay, compared to the chocolate chip  
 22 cookies.

378

380

1 Q Can you identify any instance in which  
 2 Nexus offered to provide collateral to RLI?

3 A Yes. I mean, we signed the collateral  
 4 agreement. That was an offer to provide  
 5 collateral. We had negotiations with Mr. Sandoz  
 6 about collateral and conversations about  
 7 collateral. So, yes.

8 Do I have record of any of that  
 9 collateral changing hands? In other words, do I  
 10 have a canceled check or something like that?  
 11 That answer remains no.

12 Q Okay. And are there any other  
 13 instances than the ones you just mentioned in  
 14 which Nexus has offered to provide collateral to  
 15 RLI?

16 A Can you repeat the question?

17 Q Other than --

18 A I want to make sure I heard it.

19 Q -- the instances you just mentioned,  
 20 which was the collateral agreement, the  
 21 discussions with Mr. Sandoz, are there any other  
 22 instances in which Nexus offered to provide

Transcript of Micheal Paul Donovan, Corporate Designee

96 (381 to 384)

Conducted on March 3, 2020

381

383

1 collateral to RLI?  
 2     **A Other than the communications about**  
 3 **collateral to Mr. Sandoz and then the agreements,**  
 4 **no.**

5     Q   Okay.  
 6     **A Not that I'm aware of.**  
 7     Q   What collateral has Nexus provided to  
 8 other sureties?

9     **A Nexus has provided deeds of trust to**  
 10 **other sureties; Nexus has provided cash collateral**  
 11 **to other sureties; Nexus has provided cash**  
 12 **collateral to AIA pursuant to an escrow agreement**  
 13 **that we have with that surety; and we've provided**  
 14 **collateral to FCS.**

15    Q   Okay. The deeds of trust, you said,  
 16 was to Statewide, right?

17    **A That is correct.**

18    Q   Any other bonding company that you  
 19 provided deed of trust to?

20    **A Action Bail Bonds.**

21    Q   And what is that a deed of trust to?

22    **A You know what? I apologize. We don't**

1     **A It's a rolling account that we**  
 2 **replenish from time to time, yeah.**  
 3     **Ms. Katsantonis, do you mind if I phone**  
 4 **a friend on the AIA total escrow balance so I can**  
 5 **get that for you real quick?**  
 6     Q   Why don't we do it off the record.  
 7     **A Yeah, I can do that.**  
 8     Q   Do you want to do that now?  
 9     **A No, I can wait until we finish. Let's**  
 10 **just get through it, you know.**

11    Q   Yeah. So you testified earlier, and I  
 12 want to know what facts and circumstances Nexus  
 13 asserts supports its contention that RLI acted in  
 14 bad faith or failed to act in good faith?

15    **A We've covered this at some length. But**  
 16 **I will restate several instances where I think**  
 17 **that's true.**

18    Q   Okay.

19    **A RLI has not permitted us to dispute**  
 20 **invoices either pre -- sorry breaches -- either**  
 21 **pre-invoice or post that has cost Nexus real**  
 22 **money. Nexus default rates with RLI are higher.**

382

384

1 **have any collateral with Action. We had -- our --**  
 2 **Action was the first company that we used, and**  
 3 **there were a couple of bonds that were posted**  
 4 **there, but all of those bonds have been canceled**  
 5 **so there's no current liability; I apologize.**

6     Q   How much cash collateral have you  
 7 posted with FCS?

8     **A I believe it's 650,000, but, Vivian,**  
 9 **I'll get you the exact number before I leave**  
 10 **today.**

11    Q   Okay. I've seen checks that total 625,  
 12 so maybe that's...

13    **A You know what? I think that's exactly**  
 14 **right. But I'm going to confirm it just in case.**

15    Q   Okay. And what about to AIA?

16    **A I'm going to have to confirm that. I**  
 17 **know, I believe it's 213,000 in that account, but**  
 18 **that -- that agreement allows for them to pay out**  
 19 **of that account. So I have to look at the record**  
 20 **to get you the total, but I will do that, okay.**

21    Q   Is that a rolling account that you have  
 22 to replenish?

1     **Part of the issue with that is RLI's unwillingness**  
 2 **to sign a confidentiality agreement that required**  
 3 **notification of our clients of the pending action**  
 4 **in the Western District of Virginia related to the**  
 5 **injunction order. I believe that our noticing**  
 6 **clients of that has created some elevated breach**  
 7 **activity. And also having to communicate with RLI**  
 8 **clients about the full production of the Capsule**  
 9 **data. Again, now we can communicate and we have**  
 10 **sent a copy of the court's protective order to our**  
 11 **clients. But initially we didn't have a**  
 12 **confidentiality agreement because RLI wouldn't**  
 13 **agree. So, you know, our initial disclosure to**  
 14 **some RLI and Libre participants was that we are**  
 15 **potentially going to have to disclose your**  
 16 **information. Thank goodness the court provided a**  
 17 **protective order.**

18     **Had RLI agreed to the confidentiality**  
 19 **provisions early on, there would have been no need**  
 20 **to go to the court to get an injunction that you**  
 21 **literally -- we literally got a more -- a stronger**  
 22 **protective order than we had asked you to sign in**

Transcript of Micheal Paul Donovan, Corporate Designee

97 (385 to 388)

Conducted on March 3, 2020

385

387

1 the confidentiality agreement.

2 So, again, I think good faith would  
3 have been signing the confidentiality agreement  
4 and allowing us to provide access to books and  
5 records without threatening the lives of our  
6 program participants.

7 Q With regard to the --

8 A And there's more. Do you want me to --

9 Q Sure. Give me every basis you're  
10 contending.11 MR. WILLIAMS: Well, I don't want you  
12 think I'm try to -- do you want to go off so I can  
13 ask you is there a specific area that you wanted  
14 him to cover?15 MS. KATSANTONIS: I want him to cover  
16 each and every instance which he's asserting that  
17 we -- that RLI acted in bad faith.18 MR. WILLIAMS: Well, rewriting the  
19 contract to cover all bonds, the value of all  
20 bonds when that's not what the contract says.

21 THE WITNESS: I'm going to --

22 MS. KATSANTONIS: I'm not going to ask

1 "Hey, we want \$10 million."

2 It's absolutely bad faith.

3 Q Okay. Did you -- anything else that  
4 you can think of right now?5 A As I said, I'll countenance all of my  
6 different, you know, portions of my testimony  
7 around bad faith, and I think that they've been  
8 thoroughly articulated at different points in time  
9 between this deposition and my last one.

10 Q Okay.

11 A But I'm more than happy to take up the  
12 next hour if you'd like. I think that's all the  
13 time we have.14 Q Well, let me ask you this: With regard  
15 to the collateral demands, the 1.25 or the  
16 10 million, did Nexus -- Nexus did not pay any of  
17 those collateral demands, right?18 A No. We exercised the option that RLI  
19 gave us, the either/or, which is to find a new  
20 surety so that we wouldn't have to pay the  
21 collateral demand.

22 Q Didn't Nexus start writing bonds with a

386

388

1 you to testify, Mr. Williams. I want Mr. Donovan  
2 to give us his understanding.3 MR. WILLIAMS: That's what I was trying  
4 to --5 A What I'd like to do is I'd like to  
6 point out that I've answered this question several  
7 times, both in this deposition and my last one,  
8 and I'm going to countenance my answer as a  
9 collective and ask that you look at all of those  
10 responses, because there are so many elements of  
11 bad faith that I've mentioned so many at different  
12 times.13 What I will say, also, is the demand  
14 for \$1.25 million in collateral, which was  
15 seemingly based on nothing, and then that demand  
16 of either pay \$1.25 million in collateral or find  
17 a different surety to move forward. So we did  
18 that, we found a different surety to move forward,  
19 and then on March 3rd we began to get letters from  
20 Ira Sussman, March 3rd, March 6th, literally the  
21 day after, Friday to Monday. Then March 13th you  
22 go from "Hey, we're a little bit concerned" to1 new surety months before that December 2016 email?  
2 A Evergreen? I don't believe that's the  
3 truth -- I don't believe that's the case. Nexus  
4 may have had a relationship with another surety  
5 FCS.

6 Q Right?

7 A But understand, Ms. Katsantonis, and  
8 this is where I have a real problem, like, we need  
9 to be very specific. This is a deposition. I  
10 need to be -- you know, we need to be clear what  
11 we're talking about. So can you repeat the  
12 question and let me --13 Q Weren't you already issuing and  
14 increasing the amount of bonds you were writing in  
15 June of 2016 with another surety?16 A We did have another surety, and we did  
17 write or post or secure bonds with two sureties  
18 for a certain period of time, yes.

19 Q And you were --

20 A But your question.

21 Q -- increasing in the June --

22 A Your question was did we -- did we in

Transcript of Micheal Paul Donovan, Corporate Designee

98 (389 to 392)

Conducted on March 3, 2020

389

391

1 fact engage the new surety early. Your line of  
 2 deposition question before was about Evergreen.

3 Q I --

4 A So I want to make sure we're not --

5 Q I appreciate your being precise.

6 A I just don't want to be imprecise, yes,  
 7 exactly.

8 Q I totally understand what you're saying  
 9 and I appreciate that.

10 But I'm saying in June of 2016 through  
 11 December of 2016, didn't Nexus increase the amount  
 12 of bonds it was writing with FCS?

13 A We did, have -- yes. I don't know if  
 14 it would be -- when you say "Increase," do you  
 15 mean that we did more with FSC than RLI?

16 Q You were writing a -- well, you were  
 17 writing a significant amount of bonds more with  
 18 FCS than RLI, right?

19 A Over the life cycle of the program,  
 20 yes. There probably were time where we were  
 21 writing more the RLI than FCS in that window.

22 Q No. With FCS than RLI.

1 actual loss of potential --

2 Q Actual loss Nexus has stained.

3 MR. WILLIAMS: Excluding attorneys'  
 4 fees?

5 Q -- as a result of RLI's alleged bad  
 6 faith or not acting in good faith?

7 A Got it. Thank you, Ms. Katsantonis,  
 8 and just to be clear, what I heard you say before  
 9 was the collateral demands. And I want to make  
 10 sure --

11 Q Well, I mean both.

12 A I want to make sure. I want to be  
 13 clear.

14 So the -- RLI's unwillingness to  
 15 provide a confidentiality agreement that protected  
 16 the clients; RLI's demand for 1.25 million or to  
 17 replace the surety, we replaced the surety as RLI  
 18 requires, and then RLI demands \$10 million.

19 You know, we have an elevated breach  
 20 rate with RLI that has everything to do with the  
 21 way that this relationship has existed. And, you  
 22 know, our communications with clients related to

390

392

1 A See how inartful I can be.

2 Q And Nexus did not respond to the  
 3 10 million collateral demand from RLI, right?

4 A No. With all due respect, I thought it  
 5 was a ridiculous demand. It was not based on  
 6 reality.

7 Q Right. And so what, if any, damages  
 8 has Nexus sustained as a result of the collateral  
 9 demand?

10 A Well, as it relates to the bad faith in  
 11 general, I think that it's important to understand  
 12 that this starts with the demand for access to  
 13 books and records and the unwillingness to sign a  
 14 confidentiality agreement to protect these  
 15 vulnerable people, which our company then spent a  
 16 million dollars in legal fees to try to protect.

17 So why don't you ask me the question  
 18 again. I want to make sure I completely  
 19 understand.

20 Q I'm just trying to understand what  
 21 financial loss --

22 MR. WILLIAMS: Are you talking about

1 disclosures have made it more difficult to manage  
 2 this book. And it's unfortunate.

3 And we -- when you look at the 2.3  
 4 fault rate versus the 7 percent fault rate with  
 5 RLI, we're talking about millions of dollars in  
 6 potential damages. Not to mention the fact that  
 7 you just put a document in front of me where Ira  
 8 Sussman refused to allow us to contest and  
 9 mitigate an invoice that clearly should have been  
 10 \$3,400 and not \$10,000. Not to mention the fact  
 11 that we have the bonds that we referenced on the  
 12 Friday, which you show that was canceled, and you  
 13 also billed us for, that we paid for, even though  
 14 in your production discovery you said you received  
 15 the cancellation for it.

16 Q Can you tell me --

17 A You can add all that up together. And  
 18 in fact, maybe I can -- maybe I'll put together a  
 19 damages sheet and send it to you so you'll have  
 20 it.

21 Q Sitting here today, you can't  
 22 identify -- you can quantify the financial losses

Transcript of Micheal Paul Donovan, Corporate Designee

99 (393 to 396)

Conducted on March 3, 2020

393  
1 sustained by Nexus as a result of RLI's failure to  
2 act in good faith or acting in bad faith, correct?

3     **A Oh, absolutely I can.**

4     Q   What is it?

5     **A I'll do one of two things. I can – we**  
6 **can finish this deposition and I'll get it to you**  
7 **before I leave, or I can pause – I'll take some**  
8 **time right now to get it. Whichever you prefer.**

9     Q   What are the elements of the costs that  
10 you were asserting Nexus has incurred?

11    **A Okay. So I'm going to go to – I'm**  
12 **going to go to documents and review. I'm going to**  
13 **need a few minutes to do that.**

14    **Do you want to do that or do you want**  
15 **me to finish the deposition and let me get that to**  
16 **you –**

17    Q   What document would you review?

18    **A I would review the fail rate. I would**  
19 **want to look at the fail rate and what that – if**  
20 **the fail rate with RLI was consistent with our**  
21 **average fail rate, what that would be. I want to**  
22 **look at individual instances where we sought to do**

394  
1 disputes.

2       **So there's a lot of documentation that**  
3 **I want to review. I'm more than happy to provide**  
4 **you a damages sheet, and I can do it tonight, or I**  
5 **can do it now. But I'm going to need some time to**  
6 **go through my documents. That's what I'm saying.**

7     Q   We only have less than an hour left.

8     **A I'm trying to be respectful.**

9     Q   I'm asking you right now whether you  
10 can quantify the damages incurred, any damages  
11 incurred by Nexus as a result of RLI's failure to  
12 act in good faith or bad faith?

13    MR. WILLIAMS: He'll amend the initial  
14 disclosures. The initial disclosures --

15    **A Well, no, I'll take the time to do it**  
16 **now.**

17    Q   I don't want you to take the time. I  
18 don't have time on my record.

19    **A You've asked me three times, Ms.**  
20 **Katsantonis. You asked me three times. Now, do**  
21 **you want me to answer the question or not?**

22    Q   I'm asking you right now do you -- have

395  
1 you quantified --

2       MR. SHOREMAN: Wait a second.

3       Q   -- the amount of damages Nexus has  
4 incurred?

5       **A More than happy to do it right now**  
6 **based on documents. Just give me a few minutes.**

7       Q   Wait a minute. Mr. Donovan, have you  
8 done it before right now?

9       **A There are plenty of instances of the**  
10 **damages. I have to add them together. You're**  
11 **asking me to do that. I'm happy to provide them**  
12 **to you, okay?**

13      **I can do it now. We can take the time**  
14 **and I can go do it now. I was nice and offered to**  
15 **let you finish this deposition and then do it on**  
16 **my own time, which I don't have to do that. I was**  
17 **being nice –**

18      MR. HARRIS: Actually you do.

19      **A -- because I'm trying to be respectful.**  
20      MR. WILLIAMS: We'll amend the initial  
21 disclosures.

22      MS. KATSANTONIS: I'm not asking you to

396  
1 amend anything. Today's the deposition.

2       MR. HARRIS: A specific topic he was  
3 supposed to be prepared on the facts and  
4 circumstances surrounding the damages.

5       MR. SHOREMAN: He's prepared. He can  
6 do this.

7       THE WITNESS: Yeah, I will do it.

8       MS. KATSANTONIS: I'm not --

9       MR. HARRIS: It's deposition time --

10      THE WITNESS: Because I'm not going to  
11 be accused of not being prepared. Absolutely.

12      MR. KOWALCZUK: The court reporter  
13 cannot transcribe all of you talking at the same  
14 time.

15      MR. SHOREMAN: Then let me talk. We  
16 did it -- just calculated --

17      MS. KATSANTONIS: Mr. Shoreman, I'm not  
18 having this deposition as a exercise for  
19 Mr. Donovan to get --

20      THE WITNESS: No, this is an exercise  
21 where Mr. Donovan answers your questions. And  
22 that's what I'm going to do.

Transcript of Micheal Paul Donovan, Corporate Designee

100 (397 to 400)

Conducted on March 3, 2020

397

399

1 MR. SHOREMAN: It's not a memory test.  
2 It's not a memory test. He has to refer to his  
3 documents.

4 MS. KATSANTONIS: I asked him which  
5 categories of documents he's referring to.

6 Q What are you referring to, Mr. Donovan?  
7 MR. SHOREMAN: He's referring to  
8 default records.

9 MS. KATSANTONIS: Don't --  
10 Mr. Shoreman, please let him testify.

11 A I've already answered the question,  
12 Ms. Katsantonis. I told you that I wanted to  
13 review the default rates and understand the  
14 difference. I told --

15 Q Can you tell me what calculation you're  
16 doing?

17 A Ma'am, I'm not done. You're  
18 interrupting me again. That's not nice.

19 I'm also going to go and look at the  
20 data. You just put an email in front of me that  
21 showed the \$6,600 that your client cost us by not  
22 letting us dispute. I need to add those up. It's

398  
1 a simple mathematical thing. Let me add them up.  
2 If you want the total now, give me a  
3 few minutes, I'll add it up, I'll give it to you.  
4 If you want the total after, then we'll finish the  
5 deposition; I'll give it to you after.

6 This doesn't have to be -- this is not  
7 going to be a "gotcha." If you want to put on the  
8 record that I don't know, then I'm going to take  
9 the moments necessary to get you the number.

10 Q I think it's obvious that at this  
11 moment right now you don't know without taking the  
12 time to add it up.

13 A I would have to add it up.

14 Do you want me to add it up?

15 MR. SHOREMAN: Objection.

16 Q No, I want to finish -- I want to  
17 continue with my deposition. I don't have time  
18 left. So let me continue with my questions.

19 One of the things I asked about --

20 MR. SHOREMAN: I want the record to  
21 reflect that you denied him the opportunity to  
22 answer the question --

1 THE WITNESS: Please.

2 MR. SHOREMAN: -- based on the  
3 documents he has in front of him.

4 THE WITNESS: That's right.

5 Q Based on -- one of the issues you  
6 stated was the -- a confidentiality agreement,  
7 correct?

8 A Yes, ma'am.

9 Q Is there a confidentiality clause in  
10 the indemnity agreement between RLI and Nexus?

11 A I'd have to review it. I don't  
12 remember every word of it.

13 Q You know there's not one in the  
14 RLI/Nexus --

15 MR. SHOREMAN: Objection.

16 Q -- indemnity agreement right?

17 MR. SHOREMAN: Objection.

18 MR. WILLIAMS: Objection.

19 MR. SHOREMAN: Objection. That's not a  
20 proper question.

21 MS. KATSANTONIS: He's answering the  
22 question.

400

1 MR. HARRIS: You've made your objection  
2 three times.

3 MR. SHOREMAN: Right. But it wasn't a  
4 proper question and you continued.

5 Q Go ahead.

6 A As it relates to protecting Nexus  
7 Program participants, we felt it was important to  
8 negotiate additional protections given the  
9 extensive amount of information RLI was  
10 requesting.

11 Q Okay. And you -- so in the indemnity  
12 agreement between RLI and Nexus, there is no such  
13 confidentiality provision, right?

14 A Correct.

15 Q And, in fact, you have negotiated other  
16 indemnity agreements and have added those kind of  
17 provisions in those indemnity agreements, correct?

18 A I learned from this relationship,  
19 Ms. Katsantonis.

20 Q All right. Can you just verify --  
21 let's mark this exhibit.

22 (Donovan Exhibit 22 marked for

Transcript of Micheal Paul Donovan, Corporate Designee

101 (401 to 404)

Conducted on March 3, 2020

	401		403
1 identification and attached to the transcript.)		1 A Yes.	
2 Q This is a Commercial and Immigration		2 Q Okay. And how many?	
3 Surety Indemnity Agreement on behalf of		3 A Those people – those people have	
4 Philadelphia Reinsurance Corporation and executed		4 independent rights. As Judge Urbanski said, they	
5 by Nexus Services, Inc., correct?		5 have a right to –	
6 A That is correct.		6 Q I'm just asking you how many people did	
7 Q Okay. And to the best of your		7 you advise that to?	
8 knowledge, is this an accurate copy of the		8 A I don't know. But I'll get you the	
9 indemnity agreement you executed with -- or on		9 total by the time I leave here today.	
10 behalf of Philadelphia Reinsurance Corporation?		10 Q Is it more than ten?	
11 A To the best of my knowledge, it is.		11 A I'm sure.	
12 Q Okay. And with regard to -- with		12 Q And that was all verbal.	
13 regard to the confidentiality agreement, you said		13 A Correct.	
14 that you had to make a disclosure to Libre		14 Q And did --	
15 participants?		15 A We have sent a copy of the court's	
16 A We did make a few disclosures to Libre		16 protective record to clients. So we have a	
17 participants at different times during this case		17 written document that's gone out, and I'll get a	
18 with RLI.		18 copy of that to you as well.	
19 Q How did you make disclosures to Libre		19 Q Okay. And did program participants in	
20 participants?		20 their contract, don't they agree that all the	
21 A We've called. We've sent messages.		21 information provided can be shared with the	
22 Mostly called. We operate a call center so we'll		22 surety?	
	402		404
1 call people and advise them.		1 A No. Not under RLI's – RLI was under	
2 Q So any calls to Libre participants		2 the old contract, Ms. Katsantonis.	
3 advising that you were disclosing Capsule		3 Q Right. And didn't the old contract	
4 documents would be reflected in the notes?		4 provide that the information provided could be	
5 A Likely. The only instance where that		5 provided to the surety?	
6 wouldn't be the case is if that was a call that		6 A Well, I understand, based on my initial	
7 was being done by a special group of call center.		7 deposition, that you misunderstand a portion of	
8 In other words, it isn't done by our Libre call		8 the agreement to say that.	
9 center. We would have brought in – so, for		9 The new contract does say that certain	
10 example, when we have a disclosure, we have to		10 information will be shared with the surety. But	
11 reach a certain number of people. We'll bring in		11 the only contract had a privacy provision that	
12 team, we have an empower call center team that		12 said specifically that GPS tracking data and other	
13 will come in and make calls from time to time, and		13 personal information wouldn't be.	
14 those records may or may not be reflected in		14 Q How many RLI bond -- program	
15 Capsule.		15 participants have executed the new contract?	
16 Q Did you make -- did you cause anyone		16 A Roughly half. I will get you the total	
17 specifically? Did Nexus -- do you have a record		17 tonight.	
18 that you specifically advised a program		18 Q Did Nexus sustain any financial damage	
19 participant that there was going to be a		19 as a result of RLI's demand for 10 million in	
20 disclosure of Capsule documents?		20 collateral?	
21 A We made –		21 MR. SHOREMAN: Wait. That was just	
22 Q To RLI?		22 asked and answered.	

Transcript of Micheal Paul Donovan, Corporate Designee

102 (405 to 408)

Conducted on March 3, 2020

405

407

1     **A** Yeah. Well, I mean, we had –  
 2     Q Specific to the collateral demand.  
 3     **A** Right. Well, that collateral demand  
 4 was part of the successive of series of  
 5 communications that led us to try to negotiate the  
 6 confidentiality agreement. There were significant  
 7 amounts of money spent trying to compel RLI to  
 8 just agree not to put these people at risk, right?

9     Q So you're talking about attorneys'

10 fees.

11    **A** I'm talking about attorneys' fees. I'm  
 12 also talking about time we spent, you know, trying  
 13 to make sure that RLI program participants knew  
 14 what was happening; that they were able to, you  
 15 know, bring a case, if necessary. Several RLI  
 16 Libre program participants, in fact, did file a  
 17 motion to intervene, as you may remember.

18    So, you know, I mean, those  
 19 communications were ongoing. That's how those  
 20 people found out that they had an opportunity to  
 21 intervene, right? We were communicating with  
 22 them.

406

408

1     Q Right. But as a result of just the  
 2 collateral demand, do you have any financial  
 3 damage amount that you've incurred as a result of  
 4 RLI's demand in March of 2017 that Nexus post  
 5 10 million in collateral?

6     **A** Yeah. I'll get that dollar amount for  
 7 you at the end. I just need to add it up.

8     Q So you're saying you incurred a  
 9 pecuniary loss as a result of the \$10 million  
 10 collateral demand?

11    **A** I'm saying that we, in response to that  
 12 letter, and those series of demands, we had to  
 13 apportion resources to communicating with RLI  
 14 program participants, to making sure that those  
 15 participants' information was protected to the  
 16 extent that I would have to put together what  
 17 that – what that –

18    Q I'm talking about the 10 million  
 19 collateral demand, the financial demand.

20    **A** No, I understand what you're talking  
 21 about.

22    Q So what does that have to do with

1 program participant information?

2     **A** Mr. Sussman sent us three letters  
 3 within ten days with an ever-increasing level of  
 4 threat. We needed to ensure that RLI program  
 5 participants were safe. We needed to negotiate a  
 6 confidentiality provision to ensure that they be  
 7 safe.

8     Q I'm talking about just the ten million  
 9 collateral demand, the financial demand?

10    **A** Right. I would need to look at the –  
 11 I mean, I have an idea. I need to look at the  
 12 total number of hours that were spent in response  
 13 to that. And I can apportion – I can give you a  
 14 dollar amount, but I'll have to do it –

15    Q In response to the \$10 million demand?

16    **A** Yes.

17    Q Okay. And --

18    **A** And I'll provide that to you at the end  
 19 of the deposition.

20    Q And do you have a written agreement  
 21 that entitles Nexus to attorneys' fees?

22    **A** No. Not that I'm aware of.

1     Q And do you have -- do you know under  
 2 what authority Nexus is contending that it's  
 3 entitled to attorneys' fees?

4     **A** I'm not a lawyer, Ms. Katsantonis.

5     Q So you don't have -- you don't know,  
 6 sitting here today, the basis to which Nexus would  
 7 be entitled to attorneys' fees, right?

8     **A** I'm not a lawyer, Ms. Katsantonis.

9     Q So the answer's no, right?

10    **A** I'm not a lawyer. There are certain  
 11 questions that, you know --

12    Q I'm just asking you do you know.

13            MR. SHOREMAN: Objection. Asked and  
 14 answered. You're asking for a legal conclusion.  
 15 He doesn't understand that.

16            MS. KATSANTONIS: He hasn't answered.

17    **A** I'm not a lawyer.

18    Q So the answer's no?

19    **A** I can't give you the legal conclusion  
 20 you're looking for because I'm not a lawyer.

21            MR. SHOREMAN: He doesn't have -- he  
 22 doesn't have the --

Transcript of Micheal Paul Donovan, Corporate Designee

103 (409 to 412)

Conducted on March 3, 2020

409

411

1 Q So you don't know the bases by which  
2 Nexus would be claiming attorneys' fees?

3 A I can't provide the legal conclusion  
4 you're asking for because I'm not a lawyer.

5 Q Okay.

6 A Didn't finish law school yet. Maybe  
7 one day. Oh, but maybe not. I'm not sure I could  
8 do this every day. You tether yourself to a table  
9 for seven hours.

10 MS. KATSANTONIS: Can we go off the  
11 record for a minute, please.

12 THE VIDEOGRAPHER: We are going off the  
13 record at 20:52.

14 (Recess taken.)

15 THE VIDEOGRAPHER: We are back on the  
16 record at 21:07.

17 BY MS. KATSANTONIS:

18 Q Okay. So, Mr. Donovan, we were talking  
19 earlier about RLI's request for documents and  
20 access to Nexus' books and records in March of  
21 2017.

22 And do you recall that after that

1 1 Ms. Katsantonis, because you were involved in many  
2 of those conversations.

3 So we were very --

4 Q Prior to May.

5 A -- very consistent in our request for a  
6 confidentiality agreement when it became obvious  
7 to us that RLI intended to gather significant  
8 information about our program participants at a  
9 time when it no longer was writing business.

10 Q Let me ask you something.

11 A It raised concerns that we needed to  
12 have our clients protected, and we simply asked  
13 that you sign a confidentiality agreement, which  
14 you wouldn't do.

15 Q Prior to May 2017, do you have any  
16 document in which Nexus was requesting a  
17 confidentiality agreement?

18 A No. But, I mean, you're well aware  
19 that we were requesting a confidentiality  
20 agreement. We've been consistent in that from the  
21 beginning.

22 Q In the May meeting in 2017, Nexus did

410

412

1 request a meeting was set up in Verona between RLI  
2 and Nexus?

3 A What day was that?

4 Q It was set up in May 2017.

5 A Right. After the letters from Sussman  
6 in March?

7 Q Correct.

8 A Right. Yeah, I am aware of that, yes,  
9 ma'am.

10 Q And the purpose of that meeting was so  
11 that -- RLI had requested access to Nexus' books  
12 and records, right?

13 A That's correct. And we had insisted on  
14 establishing confidentiality provisions to protect  
15 our consumers.

16 Q Well, you don't have any documents  
17 prior to that meeting in which Nexus requested a  
18 confidentiality agreement, right?

19 A Since the beginning of those  
20 communications, once the -- once we received those  
21 communications from Mr. Sussman, I think we were  
22 clear. And you certainly know that,

1 not provide any documents to RLI, correct?

2 A That's correct. You refused to sign a  
3 confidentiality agreement.

4 Q Well, are you saying there was a  
5 confidentiality agreement presented at the  
6 meeting?

7 A I'm saying that you refused to engage  
8 counsel to sign one. And certainly between my  
9 competent counsel, and you being competent  
10 counsel, it could have been happened and should  
11 have been happened, and if it had happened, we  
12 would have saved millions of dollars in litigation  
13 cost.

14 Q Isn't it true prior to the meeting no  
15 confidentiality agreement was provided by Nexus,  
16 prior to the May 2017 meeting?

17 A I'm not sure if a draft was provided or  
18 not. But I don't think it really matters. I  
19 mean, we had significant conversations about the  
20 confidentiality agreement. At every turn we  
21 requested that you sign a confidentiality  
22 agreement, and every turn your client refused. I

Transcript of Micheal Paul Donovan, Corporate Designee

104 (413 to 416)

Conducted on March 3, 2020

413

415

1 think the record is pretty clear on that.

2 Q Mr. Donovan, I'm trying to be precise  
3 in timing. So prior to May 2017, you're not aware  
4 of any confidentiality agreement being provided to  
5 RLI, correct?

6 A Right. Prior to the demand for onerous  
7 access to books and records that would expose  
8 confidential information from a vulnerable class  
9 of people, no.

10 We did not feel –

11 Q Prior to the May meeting?

12 A Right. Prior to the May meeting. When  
13 the May meeting it became clear that RLI intended  
14 to raid data that was specific confidential data  
15 that was potentially damaging to our program  
16 participants, it is that point at which we said we  
17 need a confidentiality agreement.

18 Ms. Katsantonis, I thank you for  
19 pointing that out, because it does belie the fact  
20 that a hundred percent of the time our focus has  
21 been on our clients.

22 Q Great.

414

416

1 A It hasn't been –

2 Q Thank you. I don't --

3 A It's -- and as you well know, when RLI  
4 initially talked to us about signing a  
5 confidentiality agreement, they agreed --

6 Q Mr. Donovan --

7 A -- to sign a confidentiality that  
8 would --

9 Q -- this is not --

10 A -- protect our trade secret  
11 information.

12 Q Mr. Donovan --

13 A I said to RLI what I cared about was  
14 client confidentiality.

15 Q Okay, Mr. Donovan, thank you.

16 A Thank you.

17 (Donovan Exhibit 23 marked for  
18 identification and attached to the transcript.)

19 Q Forwarding you correspondence dated  
20 June 1st, 2017 --

21 A Thank you.

22 Q -- from RLI's counsel to Nexus'

1 counsel.

2 Do you -- and you're copied on it,  
3 correct.

4 A I'm cc'd at the end. Let me read this  
5 real quick.

6 Yep, I've read it.

7 Q Okay. So as of June 1st, 2017, RLI was  
8 still requesting information from Nexus Services,  
9 Inc., right?

10 A Yes.

11 Q And Nexus Services still had not  
12 provided any books and records to RLI as of  
13 June 2017, correct?

14 A Nexus Services had the position that we  
15 needed a confidentiality agreement to protect our  
16 client-sensitive information.

17 Q What sensitive information is being  
18 asked for in this letter --

19 A Well –

20 Q -- that you needed a confidentiality  
21 agreement to protect?

22 A I340 notices include confidential

1 information related to program participants.

2 I797(c) notices can.

3 Q Are those --

4 A I210 notices certainly do. And I391  
5 notices do as well.

6 Other court notices would as well.

7 We're talking about addresses. We're talking  
8 about individual names.

9 Ms. Katsantonis –

10 Q Aren't those --

11 A -- this is the very information that we  
12 need to protect.

13 Q Okay. So aren't those notices, notices  
14 that RLI would get through the course of the bond  
15 program anyway?

16 A The I340s, yes. The I797(c)s, no. The  
17 I210s, no.

18 Q The I391s?

19 A Sure.

20 Q Okay.

21 A But the I210, which are notices of –

22 Q So RLI would already have --

Transcript of Micheal Paul Donovan, Corporate Designee

105 (417 to 420)

Conducted on March 3, 2020

417

419

1   **A** -- contain significant additional  
2 amounts of information RLI wouldn't have.

3   **Q** So RLI would already have the names and  
4 personal information --

5   **A** You'd have the names.

6   **Q** -- and personal information of the  
7 bond --

8   **A** You'd have the A numbers, yeah.

9   **Q** Okay. And there's no mention in this  
10 letter of a confidentiality agreement, right? It  
11 just -- the only mention of confidentiality is to  
12 keep the financial information confidential,  
13 right?

14   **A** Exactly. RLI seemed willing to keep  
15 our financial information confidential, but was  
16 resistant to signing a confidentiality agreement  
17 to protecting consumer information, which is --

18   **Q** You had not --

19   **A** Please. I want you to understand that  
20 that was a huge driving point for me to be very  
21 suspicious --

22   **Q** Okay.

1 communication with not just a former employee,  
2 but, you know, the former head of a terrorist  
3 organization in Virginia, and you're doing it and  
4 you're accepting stolen records from him.

5   **Q** Mr. Donovan --

6   **A** Did you --  
7   **Q** -- as of this?

8   **A** -- receive stolen records from  
9 Mr. Brigman. Did you or not?

10   **Q** Mr. Donovan, I'm here for your  
11 deposition. It would be appropriate if you allow  
12 me to conduct your deposition, okay?

13   **A** If you had not, you would say so,  
14 Ms. Katsantonis. So we all know what that means.

15   **Continue, please.**

16   **Q** Mr. Donovan, in the June 1st -- as of  
17 June 1st, 2017, Nexus had not provided any  
18 confidentiality agreements that it proposed to  
19 RLI, correct?

20   **A** We asked RLI --

21           **MR. SHOREMAN:** Let me object. Let me  
22 note this June 1st, 2017, Exhibit 23, I believe,

418

420

1   **A** -- because RLI wanted -- why was RLI  
2 willing to agree to confidentiality related to  
3 business information --

4   **Q** I --

5   **A** -- but not related to clients?

6           **And, Ms. Katsantonis, you signed this**  
7 letter. You stated in this letter that you  
8 understand the requested financial information is  
9 sensitive and confidential and you'll maintain the  
10 confidential nature of all information provided --

11   **Q** Right.

12   **A** I have reviewed --

13   **Q** Didn't agree to sign a --

14   **A** -- I've reviewed an email between David  
15 Brigman and you, where he provided you, or he  
16 states that he provided you with stolen corporate  
17 records. I have not seen you produce that.

18           I'm going to send, via counsel, the  
19 email that I've reviewed today. And this is,  
20 again -- I don't understand why you're offering to  
21 keep things confidential in this letter, and then  
22 you're engaging in absolutely inappropriate

1 is addressed to Mary Donne Peters.

2           **MS. KATSANTONIS:** We've already had  
3 testimony on this, Mr. Shoreman. He's copied on  
4 it.

5           **MR. SHOREMAN:** Well, I don't want him  
6 disclosing any communication he had about this  
7 exhibit with his counsel because it would waive  
8 his privilege.

9           **MS. KATSANTONIS:** That's great. And  
10 I'm only asking him --

11           **MR. SHOREMAN:** Or any information he  
12 received from his counsel.

13           **MS. KATSANTONIS:** -- as a matter of  
14 fact.

15   **Q** Nexus had not provided, and you don't  
16 have any correspondence prior to June 1st, 2017,  
17 where Nexus advised RLI a confidentiality  
18 agreement had to be executed, correct?

19   **A** We were consistent in telling RLI that  
20 we needed a confidentiality agreement. The letter  
21 that you've put in front of me is dated June 1st.

22   **Q** Right.

Transcript of Micheal Paul Donovan, Corporate Designee

106 (421 to 424)

Conducted on March 3, 2020

421  
1     A   The letter you have put in front of me,  
2 which is a letter from you to Mary Donne, doesn't  
3 mention a confidentiality agreement.

4       Those things I can testify to because  
5 this document's sitting in front of me.

6     Q   And you're not aware of any  
7 confidentiality agreement that was provided to RLI  
8 prior to June 1st, 2017, correct?

9     A   I wouldn't know. I know we had  
10 conversations about it.

11    Q   Okay. And isn't it true that RLI did  
12 provide a confidentiality agreement sometime later  
13 for Nexus to review and consider?

14    A   That's correct.

15    Q   Okay. And --

16    A   And it was wholly insufficient because  
17 it didn't protect the client-confidential  
18 information.

19    Q   Mr. Donovan --

20    A   Because your client plans to use that  
21 to lock clients up. We all know that. That's why  
22 your client is unwilling to agree to the

422       protections, right?

2     Q   Mr. Donovan, do you have any facts or  
3 circumstances to support a contention that RLI is  
4 going to lock up program participants?

5     A   Other than your statement in a hearing  
6 that you -- your client believes it's their duty  
7 to deliver people.

8       How exactly are you going to do that?

9       How exactly are you going to deliver them? You're  
10 going to arrest them, right? You're going to put  
11 handcuffs and you're going to hire bounty hunters  
12 and you're going to go into their houses. You're  
13 going to, you know, abuse them in front of their  
14 children. You're going to -- you know, you're  
15 going to do the Trump dance, right? This is what  
16 it is.

17       Your insurance company is going to go  
18 and try to get rid of its liability by locking  
19 these people up. It's absolutely ridiculous.

20    Q   Can we stick to the facts? This is  
21 what your deposition is about.

22    A   That -- these are the facts. These are

423       the facts.

2     Q   There are no facts to support your  
3 statement.

4     A   Did you say that you have a duty to  
5 deliver people? I mean, you said it here.

6     Q   Mr. Donovan, I don't know why you're  
7 trying to attack me in the end of this deposition.  
8 But right now we're here for your deposition --

9     A   Ms. Katsantonis --

10    Q   -- and I'm only trying to get the  
11 facts --

12    A   -- if you'll answer my --

13    Q   -- to your understanding, Mr. Donovan.  
14 It is your deposition.

15    A   So did you accept stolen corporate  
16 documents from Mr. Brigman, Ms. Katsantonis? Did  
17 you or not?

18    Q   Mr. Donovan --

19    A   That's a yes.

20    Q   -- we're going to ask your counsel --

21       MS. KATSANTONIS: Counsel, Mr. Shoreman  
22 and Mr. Williams, I'm going to ask you both to

424       direct your client to stop asking questions of  
2       counsel. It's inappropriate.

3     A   I'd like to direct my counsel to draft  
4 a Rule 11 letter.

5       I am tired of people receiving --  
6       MS. KATSANTONIS: Let's go off the  
7 record.

8       A   -- receiving stolen --

9       MR. WILLIAMS: Let's go off the record.

10      Let's take a break. Let's take a break.

11       MS. KATSANTONIS: Let's go off the  
12 record.

13       THE VIDEOGRAPHER: We are going off the  
14 record at 21:19.

15       (Recess taken.)

16       THE VIDEOGRAPHER: We are back on the  
17 record at 21:24.

18 BY MS. KATSANTONIS:

19    Q   That's the March 19th, 2018 letter.

20    A   Yes, ma'am.

21    Q   So I'm going to show you a document  
22 dated March 19th, 2018.

Transcript of Micheal Paul Donovan, Corporate Designee

107 (425 to 428)

Conducted on March 3, 2020

425

427

1 Do you recognize this document you're  
 2 copied on?

3 **A Let me read it real quick.**  
 4 (Donovan Exhibit 24 marked for  
 5 identification and attached to the transcript.)  
 6 **A It's a really long letter. I'm sort**  
 7 **of – I'm remembering it and I'm breezing through**  
 8 **it. But if you ask specific questions, I may need**  
 9 **to go back to the document.**

10 MR. SHOREMAN: While you're taking a  
 11 look at that, let me just note this is obviously a  
 12 letter from counsel to counsel. I'll caution the  
 13 witness any communication he had with counsel  
 14 concerning this are privileged. And if you  
 15 discuss them, you will waive that privilege.

16 THE WITNESS: Thank you.

17 Q In March of 2018, RLI made a further  
 18 demand for access to Nexus Services' records,  
 19 right.

20 **A It certainly appears that way in this**  
**21 document that was a demand that you made, yes.**

22 Q Okay. And in the first paragraph of

426

1 the letter RLI demanded that Nexus make its books,  
 2 records, and accounts available for inspection by  
 3 RLI at its offices in Verona -- at Nexus' office  
 4 in Verona on March 29th, 2018, correct?

5 **A That's what it says, yes, ma'am.**

6 Q Okay. And then there's the discussion  
 7 about the confidentiality agreement. RLI confirms  
 8 that it has provided one.

9 And if you look on page 3 of the  
 10 letter, RLI says to accommodate Nexus'  
 11 confidentiality concerns, it's willing to execute  
 12 the confidentiality agreement provided by RLI's  
 13 counsel, even though RLI's rights under the  
 14 indemnity agreement are no way conditioned upon  
 15 its execution of such confidentiality agreement,  
 16 correct?

17 **A That is the language in the letter,**  
**18 yes.**

19 Q Right. And RLI advised whether or not  
 20 Nexus chooses to proceed under the agreement, RLI  
 21 expected Nexus to cooperate in making its books  
 22 and records available to it by March 29th, 2018,

427

1 right?  
 2 **A That's what it says. What it doesn't**  
 3 **say is that the agreement wholly -- the**  
 4 **confidentiality agreement was wholly insufficient**  
 5 **because it didn't address the client-specific**  
 6 **issues sufficient enough.**

7 (Donovan Exhibit 25 marked for  
 8 identification and attached to the transcript.)

9 Q And Nexus didn't respond to that letter  
 10 until March 28th, one day before RLI was to  
 11 present itself at the offices of Nexus in Verona,  
 12 correct?

13 **A I don't think that's a correct**  
**representation of what this says.**

15 Q If you look at the bottom of the email.

16 **A I think you wanted to come to the**  
**campus on March 29th, right? I don't think that**  
**18 that appointment was set.**

19 **And then I think that you, in this**  
**20 communication, said, "I'm coming tomorrow," right?**

21 Q Well, in our letter we said, "We demand  
 22 that Nexus make its books, records, and accounts

426

428

1 available on March 29th," right?

2 **A That's true.**

3 Q Right.

4 **A But we didn't -- it's not as if we had**  
**5 a meeting that was canceled, right? We didn't**  
**6 have a meeting on March 29th. On March 28th you**  
**7 said in an email, "I'm coming tomorrow." And it**  
**8 was Mary Donne's --**

9 Q Well, on March 19th --

10 **A -- response that said, "Don't come**  
**11 tomorrow because we're not going to be there,"**  
**12 right?**

13 Q On March 19th we said -- RLI asked  
 14 Nexus to make its books, records, and accounts  
 15 available on March 29th, right?

16 **A Yeah. But we never said you could come**  
**17 to the campus. I'm just saying --**

18 Q Right. You never responded.

19 **A -- you would have set up an**  
**20 appointment.**

21 Q You didn't respond at all, right?

22 **A You sent an email saying, "Hey, we're**

Transcript of Micheal Paul Donovan, Corporate Designee

108 (429 to 432)

Conducted on March 3, 2020

429

431

1 going to show up tomorrow."

2 And we said, "No, you're not."

3 Q We didn't send an email saying we were  
4 going to show up tomorrow. We sent a letter on  
5 March 19th saying we'll show up on March 28th,  
6 correct? I mean on March 29th.

7 A It looks like on March 28th, 2018,  
8 10:39 a.m. Vivian Katsantonis wrote, "Mary Donne  
9 and Amy, We have not received a response to our  
10 correspondence on March 19th regarding access to  
11 and our review of Nexus Services books and  
12 records. As set forth in our correspondence, we  
13 plan to review those records tomorrow, March 29th,  
14 at Nexus's offices in Verona, Virginia."

15 Q Right. So we had --

16 A That was not an appointment. That was  
17 you saying, "I'm coming tomorrow." That's  
18 different.

19 Q Well, we told you on March 19th, that  
20 RLI planned to be at your offices on March 29th,  
21 right? That's what the March 19th letter says in  
22 the first paragraph.

1 EXAMINATION BY COUNSEL FOR THE DEFENDANTS

2 BY MR. SHOREMAN:

3 Q Mr. Donovan, during Ms. Katsantonis'  
4 examination you were asked about damages, bad  
5 faith, specifically damages concerning default  
6 rates.

7 A Correct.

8 Q Did you have an opportunity to review  
9 records to calculate those damages?

10 A Yes.

11 Q Please tell us what you determined.

12 A We calculated \$2.5 million in loss

13 related to the breach rate of RLI versus the  
14 global breach rate, which has been caused by RLI's  
15 bad faith.

16 We calculated approximately \$2 million  
17 in attorneys' fees to fight for the  
18 confidentiality protections we ultimately received  
19 from Judge Urbanski in his order.

20 And we've calculated about \$3 million  
21 in reputational damage.

22 MS. KATSANTONIS: Okay. Can you -- oh,

430

432

1 A It certainly – in the March 19th  
2 letter it does say that it wants to come and  
3 inspect records on March 29th. That is different  
4 than having an appointment to do so. That was my  
5 point.

6 Q And counsel for Nexus advises that RLI  
7 should not come to the offices and the documents  
8 are not available and RLI should not appear at the  
9 Nexus campus, correct?

10 A That is what it says, yes.

11 MS. KATSANTONIS: I have no further  
12 questions.

13 THE WITNESS: Oh, Ms. Katsantonis, I do  
14 have the damages.

15 MS. KATSANTONIS: I have no further  
16 questions.

17 THE WITNESS: So you don't want to the  
18 damages? Because you asked.

19 MS. KATSANTONIS: Your counsel can do  
20 that.

21 MR. SHOREMAN: We'll do it quickly on  
22 redirect.

1 sorry. I forgot.

2 THE WITNESS: I can't be mad at you.  
3 You're just so charming, even when you're not.

4 Q You also offered to provide  
5 Ms. Katsantonis some additional information on  
6 liquid assets? Did you have an opportunity to  
7 review that information?

8 A I might. I had committed to providing  
9 that at the end of the deposition and I can do  
10 that before. I'll do that, you know, once we  
11 break.

12 Q Do you want to do it now, please?

13 A I can. I'm going to estimate our  
14 liquid capital at about \$3 million.

15 Q Currently?

16 A That – yes. That includes monthly  
17 AR – a monthly AR that is averaged upon  
18 collection.

19 Q All right. And lastly, you offered to  
20 give Ms. Katsantonis some information on  
21 unencumbered interest in real estate assets, other  
22 than the \$3,000 in equity in the one piece of

Transcript of Micheal Paul Donovan, Corporate Designee

109 (433 to 436)

Conducted on March 3, 2020

1 property.  
 2 Do you have information sufficient  
 3 to --  
 4 **A We have no other properties that we own**  
**5 full and -- free and clear.**  
 6 MR. SHOREMAN: I don't believe there  
 7 was anything else that was outstanding.  
 8 MR. WILLIAMS: Damages.  
 9 MR. SHOREMAN: We did the damages.  
 10 All right. Thank you very much. I  
 11 have no further questions.  
 12 EXAMINATION BY COUNSEL FOR THE PLAINTIFF  
 13 BY MS. KATSANTONIS:  
 14 Q Briefly on redirect. With regard to  
 15 the 3 million in liquid assets, is that all  
 16 monthly -- is that all based on program  
 17 participant payments?  
 18 **A That's correct. Cash on hand and**  
**19 program participant payments.**  
 20 Q So it's based on your -- how much cash  
 21 do you have on hand right now separate from the  
 22 program participant revenue?

1 **A \$420,000 in cash.**  
 2 Q Okay. And with regard to the 2 million  
 3 in attorneys' fees to fight the confidentiality  
 4 agreement, how is that broken down? How did you  
 5 determine the 2 million figure?  
 6 MR. SHOREMAN: That wasn't raised on  
 7 redirect. That's beyond the scope of my redirect.  
 8 MS. KATSANTONIS: No. He said  
 9 2 million in attorneys' fee for confidentiality  
 10 agreement. That was his testimony.  
 11 MR. SHOREMAN: I thought we were going  
 12 to default.  
 13 THE WITNESS: No, the 2 million for the  
 14 confidentiality agreement is certainly in there.  
 15 MS. KATSANTONIS: He added that.  
 16 **A And that is the estimate of the legal**  
**17 fees that were spent specifically on the**  
**18 confidentiality agreement.**  
 19 Q How would you derive that figure?  
 20 Based on what?  
 21 **A I derived it based on a rough**  
**22 calculation of the total hours that were involved**

433  
 1 in that versus -- and then looking at the legal  
 2 bills.  
 3 Now, I haven't gone to the legal bill  
 4 detail and done it line by line, but I certainly  
 5 can do that.  
 6 Q So it's your testimony that you  
 7 incurred 2 million in attorneys' fee to negotiate  
 8 a confidentiality agreement?  
 9 **A Well, it was difficult to negotiate**  
**10 because you wouldn't agree to it. And then we**  
**11 ultimately ended up having to get a protective**  
**12 order issued by the court, right?**  
 13 Q And then the two and a half million  
 14 you're asserting in loss from the breach rate, can  
 15 you tell me how that's calculated?  
 16 **A That's based on what RLI's breach**  
**17 amount would be if RLI's breach rate was**  
**18 consistent with Nexus' global breach rate.**  
 19 Q So just show me the math exactly.  
 20 **A Of course, of course, absolutely.**  
 21 Q Show me the math.  
 22 **A So I'm razzled with my documents.**

434  
 1 **434**  
 1 **Everything was together and now everything is not**  
**2 together.**  
 3 Yeah, so in calculating RLI's breach  
 4 rate as consistent with our global breach rate,  
 5 instead of \$3,212,883.67 in breaches, we would  
 6 have had an estimated 737,800 in breaches.  
 7 Q Slow down. Slow down. I just want to  
 8 understand that.  
 9 **A Uh-huh.**  
 10 Q 3 million -- you said 3 million 200 --  
 11 **A And 12 thousand 883 dollars and 67**  
**12 cents.**  
 13 Q That's for all breaches program wide?  
 14 **A No. That's RLI breaches. Those are**  
**15 all RLI's invoices paid?**  
 16 Q 3,212,000?  
 17 **A Correct.**  
 18 Q Okay. So continue with how you  
 19 calculated it.  
 20 **A And it should have been 737,800 if the**  
**21 breach rate were consistent.**  
 22 Q So you're just saying that your breach

Transcript of Micheal Paul Donovan, Corporate Designee

110 (437 to 440)

Conducted on March 3, 2020

437

1 rate is 2-plus percent, and that the RLI bond  
 2 breach rate is more than 10 percent. So you're  
 3 just coming up with the difference; is that right?  
**4 A Well, not quite just like that. We're**  
**5 applying an understanding that we don't have the**  
**6 ability to dispute the way we do with other**  
**7 sureties. We had to communicate disclosures to**  
**8 RLI clients related to disclosures of their data**  
**9 without confidentiality provisions. And all of**  
**10 those things, of course, affect bond performance.**

**11 So we do have a much higher breach rate**  
**12 with RLI, and there's a reason for that.**

**13 Q Well, in quantifying it, you're doing**  
**14 it based upon the difference between the -- your**  
**15 contention of the program-wide breach rate and**  
**16 RLI's breach rate?**

**17 A That is correct.**

**18 Q And then you're just taking the**  
**19 variance, correct?**

**20 A That's correct.**

**21 Q All right. And then how was the**  
**22 3 million in reputational damages calculated?**

437

1 determine a damage incurred as a result of  
 2 reputational loss?

**3 A I have had communications with counsel**  
**4 that I'm not going to testify to specifically.**

**5 Q All right. Do you, Nexus, have any**  
**6 actual financial calculation to support a request**  
**7 for 3 million in reputational damages?**

**8 A And as I said, I think that**  
**9 substantiated amount would be much, much, more.**

**10 Q But you have no documents to present to**  
**11 RLI to substantiate a 3 million calculation,**  
**12 correct?**

**13 A Reputational damage is difficult to**  
**14 assert in documents anyway. But, no, I do not**  
**15 have that document in front of me.**

**16 I think I could confidently prove much**  
**17 more than that.**

**18 Q And what elements form the bases of the**  
**19 reputational damage?**

**20 A What do you mean?**

**21 Q How -- yeah, what would you use to**  
**22 substantiate --**

438

**1 A I think it's much, much worse than**  
**2 that, to be honest. The attacks that we've**  
**3 experienced in this litigation as a company that**  
**4 has never failed to indemnify or exonerate your**  
**5 client.**

**6 I mean, you'd think based on the flavor**  
**7 of this litigation that you would be out millions**  
**8 and millions of dollars. That's not true. And**  
**9 the reputational damages that Nexus has suffered**  
**10 has been extensive as a result of that. Not the**  
**11 least of which includes damages, you know, from**  
**12 our reputation, vis-à-vis the government, other**  
**13 sureties, the community at large.**

**14 Q Can you tell me exactly how you**  
**15 quantify 3 million in reputational damage?**

**16 A It's an estimate.**

**17 Q So there's no document or calculation**  
**18 it's based upon.**

**19 A No. The calculation would be scores**  
**20 more. I was trying to pick a conservative, make a**  
**21 conservative estimate valuation.**

**22 Q Have you undertaken any analysis to**

439

1 determine a damage incurred as a result of  
 2 reputational loss?

**3 A I have had communications with counsel**  
**4 that I'm not going to testify to specifically.**

**5 Q All right. Do you, Nexus, have any**  
**6 actual financial calculation to support a request**  
**7 for 3 million in reputational damages?**

**8 A And as I said, I think that**  
**9 substantiated amount would be much, much, more.**

**10 Q But you have no documents to present to**  
**11 RLI to substantiate a 3 million calculation,**  
**12 correct?**

**13 A Reputational damage is difficult to**  
**14 assert in documents anyway. But, no, I do not**  
**15 have that document in front of me.**

**16 I think I could confidently prove much**  
**17 more than that.**

**18 Q And what elements form the bases of the**  
**19 reputational damage?**

**20 A What do you mean?**

**21 Q How -- yeah, what would you use to**  
**22 substantiate --**

440

**1 MR. SHOREMAN: I think that a legal --**  
**2 I think you're seeking a legal conclusion.**

**3 A It sounds like a legal conclusion.**

**4 That's why I'm asking.**

**5 MR. WILLIAMS: Are you talking about,**  
**6 like, bank closing or what are you talking about?**  
**7 BY MS. KATSANTONIS:**

**8 Q Any document you have, whatsoever, to**  
**9 substantiate the 3 million in reputational loss.**

**10 MR. SHOREMAN: You're asking for a**  
**11 legal conclusion because this could be -- like he**  
**12 was saying, you know, there's no --**

**13 MR. HARRIS: He just said he could**  
**14 prove it. We're just wondering what he --**

**15 MS. KATSANTONIS: He just said he could**  
**16 prove it. I'm trying to understand what's --**

**17 A I said I think if we pulled it**  
**18 together, it would be a lot more than that. So I**  
**19 made a conservative estimated valuation of**  
**20 3 million.**

**21 Q I'm trying to understand what**  
**22 documents? What would you look at? What are you**

Transcript of Micheal Paul Donovan, Corporate Designee

111 (441 to 444)

Conducted on March 3, 2020

441

1 going to look at to prove that you have  
2 reputational damage?

3     **A Well, think about it. Based alone on**  
4     **the fact that our breach rate is so much higher**  
5     **with RLI-bonded principals, the damage done to our**  
6     **clients -- with our client alone in understanding**  
7     **that we are having a difficult time protecting**  
8     **their confidential information, that a surety**  
9     **wants access to their confidential information and**  
10    **isn't willing to sign a confidentiality agreement.**

11    Q Aren't those damages collected in your  
12 2.5 breach rate and your 2 million confidentiality  
13 agreement numbers?

14    **A In a sense. But they're separate**  
15    **numbers altogether than the reputational damage.**  
16    **Unfortunately, when a company like RLI engages in**  
17    **this type of behavior, the damages are extensive.**

18    Q Can you tell me how specifically your  
19 reputation was damaged?

20       MR. SHOREMAN: Asked and answered.

21    **A Have you read your pleadings?**

22    Q Can you tell me specifically how your

443

1     **average breach rate and understanding that if we**  
2     **didn't have the issues with RLI, we could expect a**  
3     **consistent breach rate.**

4           I also wanted to point out,  
5     **Ms. Katsantonis, that in addition to the damages**  
6     **is the amount of money that was taken for canceled**  
7     **bonds that was ultimately paid by Nexus pursuant**  
8     **to a demand from RLI. Until you provide the**  
9     **cancellations, I don't know how much that is. And**  
10    **then whatever the value of those corporate**  
11    **documents that was given to you by Mr. Brigman.**  
12    **So those are also damages, I would say.**

13       MR. WILLIAMS: Oh, Brigman. He's  
14 touted your support.

15       Q All right. Any other damages?

16    **A No.**

17       Q No other damages you're seeking in this  
18 litigation?

19    **A Not that I'm -- not that I have any**  
20    **information to go into at this point.**

21       MS. KATSANTONIS: Okay. I have nothing  
22 further.

444

1     reputation was damaged? What was the damage?

2     **A In this litigation representations have**  
3     **been made in pleadings and in hearings that paint**  
4     **Nexus as an obstructionist, when Nexus has, at any**  
5     **turn, attempted to work with RLI.**

6           And I have demonstrated that in the  
7     multiple depositions that you've taken of me,  
8     where I point out over and over again the points  
9     and time of which RLI has done exactly what -- I'm  
10 sorry -- Nexus done exactly what RLI asked Nexus  
11 to do.

12    Q Okay.

13    **A So it's clear.**

14    Q All right. And so -- but sitting here  
15 today, you have no documents to quantify that  
16 reputational loss, correct?

17    **A I answered that already. I do not have**  
18 **a document, as I said before.**

19    Q Has Nexus taken an analysis to  
20 determine the direct impact of RLI's conduct on  
21 the breach rate?

22    **A Only insofar as comparing it to our**

442

1       MR. SHOREMAN: Thank you. Thank you  
2 very much.

3           THE VIDEOGRAPHER: If there are no  
4 further questions, this ends the deposition. We  
5 are going off the record at 21:44.

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Transcript of Micheal Paul Donovan, Corporate Designee

112 (445 to 448)

Conducted on March 3, 2020

445

1 ACKNOWLEDGMENT OF DEONENT  
2 I, MICHEAL PAUL DONOVAN, do hereby  
3 acknowledge that I have read and examined the  
4 foregoing testimony, and the same is a true,  
5 correct and complete transcription of the  
6 testimony given by me and any corrections appear  
7 on the attached Errata sheet signed by me.

8

9

10 (DATE) \_\_\_\_\_ (SIGNATURE)

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446

1 CERTIFICATE OF REPORTER - NOTARY PUBLIC  
2 I, JUDITH E. BELLINGER, RPR, CRR, the  
3 officer before whom the foregoing deposition was  
4 taken, do hereby certify that the foregoing  
5 transcript is a true and correct record of the  
6 testimony given; that said testimony was taken by  
7 me and thereafter reduced to typewriting under my  
8 direction; that reading and signing was requested;  
9 and that I am neither counsel for, related to, nor  
10 employed by any of the parties to this case and  
11 have no interest, financial or otherwise, in its  
12 outcome.

13 IN WITNESS WHEREOF, I have hereunto set  
14 my hand and affixed my notarial seal this 4th day  
15 of March, 2020.

16 My Commission Expires: September 30, 2020

17

18

19 *Judith E. Bellinger*  
20 \_\_\_\_\_

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Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

113

A	abridge	accompanying	296:11, 296:16, 296:21, 297:9,
<b>aao</b>	59:9, 83:19, 228:10	<b>accordance</b>	298:10, 299:7, 299:9, 299:22,
63:15, 63:16, 64:17, 65:4, 65:16, 65:17, 65:21, 65:22, 66:4, 66:14, 69:8, 69:20, 70:15, 71:5, 76:7, 77:4, 78:5, 100:18, 129:4, 175:1, 177:17, 179:1, 183:7	<b>abridged</b> 124:4, 251:9, 251:15 <b>absent</b> 373:18 <b>absolute</b> 110:12, 349:6 <b>absolutely</b> 20:5, 40:18, 42:5, 62:10, 68:16, 81:16, 84:5, 125:3, 144:6, 186:16, 236:2, 243:3, 293:1, 296:16, 299:9, 299:13, 303:12, 324:20, 327:8, 374:1, 376:13, 387:2, 393:3, 396:11, 418:22, 422:19, 435:20	<b>account</b>	300:4, 300:5, 300:8, 300:20, 301:8, 302:1, 302:17, 303:2, 338:10, 365:4, 373:4, 401:8 <b>accurately</b> 62:11, 291:10 <b>accused</b> 39:10, 396:11 <b>acknowledge</b> 445:3 <b>acknowledged</b> 348:22 <b>acknowledgment</b> 445:1 <b>across</b> 148:9, 182:15, 335:3, 335:5 <b>act</b> 106:14, 265:17, 383:14, 393:2, 394:12 <b>acted</b> 106:12, 318:6, 319:11, 383:13, 385:17 <b>acting</b> 40:18, 129:12, 391:6, 393:2 <b>action</b> 33:12, 65:15, 65:16, 71:8, 72:6, 72:7, 72:11, 73:16, 76:12, 182:14, 381:20, 382:1, 382:2, 384:3 <b>actions</b> 256:9 <b>active</b> 16:20, 17:4, 39:14, 124:3, 125:9, 227:3,
<b>abiding</b> 141:9	<b>accept</b> 423:15	<b>accumulating</b> 233:2	
<b>ability</b> 61:8, 64:15, 90:6, 109:12, 120:8, 121:13, 155:5, 205:2, 206:8, 252:5, 316:6, 337:22, 437:6	<b>accepted</b> 206:5, 215:10, 378:19	<b>accuracy</b> 68:14, 299:4 <b>accurate</b> 37:17, 86:11, 88:3, 109:5, 116:6, 168:3, 171:19, 172:1, 184:13, 209:14, 220:11, 235:16, 246:15, 246:16, 250:19, 274:12, 284:2, 284:3, 287:14, 287:20, 289:15, 293:20, 294:15, 294:17, 294:20, 294:21, 295:3, 295:4, 295:14, 296:5, 195:5	
<b>able</b> 44:11, 44:12, 45:13, 58:18, 59:5, 59:10, 72:7, 77:19, 92:1, 101:21, 102:13, 110:11, 125:18, 175:18, 184:1, 185:13, 189:20, 206:20, 207:5, 228:19, 230:6, 233:18, 244:16, 244:21, 247:16, 252:3, 262:2, 264:19, 296:1, 316:11, 321:4, 326:7, 326:15, 333:16, 336:19, 405:14	<b>accepting</b> 419:4	<b>access</b> 289:8, 291:8, 338:21, 339:6, 339:13, 351:18, 351:21, 352:1, 385:4, 390:12, 409:20, 410:11, 413:7, 425:18, 429:10, 441:9	
<b>above</b> 231:21	<b>accommodate</b> 426:10	<b>accommodation</b>	
<b>above-referenced</b> 146:18			

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

114

245:9, 245:10 <b>activity</b> 384:7 <b>actual</b> 170:17, 217:16, 391:1, 391:2, 439:6 <b>actually</b> 12:19, 31:17, 42:14, 56:20, 57:3, 58:16, 89:13, 125:8, 125:18, 132:6, 141:9, 167:3, 176:13, 195:6, 209:13, 240:15, 241:1, 242:5, 242:6, 242:21, 293:16, 330:4, 333:6, 395:18 <b>acutely</b> 208:15 <b>add</b> 184:10, 192:4, 195:12, 232:20, 294:18, 299:14, 299:20, 300:14, 392:17, 395:10, 397:22, 398:1, 398:3, 398:12, 398:13, 398:14, 406:7 <b>added</b> 93:17, 184:4, 188:1, 188:8, 188:10, 295:1, 321:9, 400:16, 434:15 <b>adding</b> 183:16, 289:6, 321:8, 323:4 <b>addition</b> 443:5 <b>additional</b> 27:6, 114:3, 211:18, 219:2, 221:3, 221:6, 344:17, 371:15,	400:8, 417:1, 432:5 <b>address</b> 95:8, 197:15, 427:5 <b>addressed</b> 420:1 <b>addresses</b> 416:7 <b>addressing</b> 164:11 <b>adequate</b> 201:9 <b>adequately</b> 289:4 <b>adjudicate</b> 109:12 <b>administration</b> 18:16, 229:16, 267:12 <b>administrative</b> 174:17, 269:9 <b>admittedly</b> 86:12 <b>advance</b> 67:21, 250:14 <b>adverse</b> 71:7, 72:11 <b>advise</b> 23:19, 107:13, 107:15, 126:6, 126:7, 137:14, 201:7, 248:4, 273:6, 304:22, 368:12, 402:1, 403:7 <b>advised</b> 246:13, 249:21, 257:21, 272:10, 272:13, 273:10, 285:11, 323:11, 340:17, 343:18, 344:3, 344:7, 347:3, 347:15, 366:15, 367:5, 367:19, 372:10, 402:18, 420:17, 426:19	<b>advises</b> 430:6 <b>advising</b> 344:19, 373:16, 402:3 <b>advisory</b> 38:16 <b>affect</b> 124:6, 125:21, 127:6, 253:2, 437:10 <b>affected</b> 126:10, 126:18, 188:4, 267:20 <b>affects</b> 125:3, 270:5 <b>affirmed</b> 10:17, 180:17, 263:9, 263:18 <b>affixed</b> 240:19, 240:22, 243:1, 446:14 <b>afraid</b> 38:13 <b>after</b> 28:5, 49:22, 50:16, 57:11, 59:1, 60:3, 64:13, 76:3, 86:8, 89:14, 115:4, 115:8, 130:2, 130:4, 137:8, 141:18, 141:20, 141:22, 143:22, 144:2, 144:9, 146:13, 146:16, 160:3, 167:20, 170:5, 177:22, 204:21, 226:10, 228:4, 258:2, 262:14, 263:1, 330:21, 342:11, 351:16, 354:13, 361:6, 386:21, 398:4, 398:5, 409:22, 410:5 <b>again</b> 18:1, 30:10,	35:16, 64:1, 67:8, 71:16, 78:8, 81:6, 82:8, 82:13, 111:4, 138:8, 140:21, 146:10, 149:13, 152:19, 158:19, 162:8, 171:16, 176:7, 208:4, 211:10, 214:22, 215:2, 231:3, 246:22, 247:19, 265:6, 267:1, 285:13, 301:21, 341:1, 341:13, 342:2, 347:3, 366:8, 368:8, 384:9, 385:2, 390:18, 397:18, 418:20, 442:8 <b>against</b> 19:2, 19:21, 59:21, 116:18, 123:21, 295:19 <b>agency</b> 257:20, 258:1 <b>agent</b> 37:5, 37:6, 37:11, 37:22, 40:18, 129:18, 132:5, 306:18, 306:19 <b>agents</b> 39:3, 182:6 <b>aggregate</b> 331:22 <b>aggregate</b> 44:20, 54:5, 92:16, 152:5, 171:21, 173:10, 291:21, 303:14, 304:1, 304:17, 305:14, 307:20, 309:4, 309:5, 331:20, 332:18, 334:9 <b>aggressive</b> 308:5
---	--	---	---

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

115

<b>aging</b>	391:15, 399:6, 399:10, 399:16,	132:15, 133:4, 133:7, 135:3,	442:17
<b>ago</b>	400:12, 401:3, 401:9, 401:13, 404:8, 405:6,	135:10, 135:12, 136:1, 136:6, 136:11, 136:21,	<b>also</b> 4:16, 9:20, 28:14, 48:22, 55:13, 146:5,
156:12, 248:9, 268:11, 303:11	407:20, 410:18, 411:6, 411:13, 411:17, 411:20,	137:3, 137:16, 140:22, 142:6	147:19, 176:2, 177:8, 177:19,
<b>agree</b>	412:3, 412:5, 412:15, 412:20, 412:22, 413:4,	<b>alien's</b> 126:21	183:13, 189:1, 190:11, 190:16,
26:2, 44:17, 44:22, 99:13, 111:5, 118:16, 220:17, 220:20, 235:21, 323:18, 352:18, 353:1, 354:7, 355:1, 357:19, 376:17, 384:13, 403:20, 405:8, 418:2, 418:13, 421:22, 435:10	413:17, 414:5, 415:15, 415:21, 417:10, 417:16, 420:18, 420:20, 421:3, 421:7, 421:12, 426:7, 426:12, 426:14, 426:15, 426:20, 427:3, 427:4, 434:4, 434:10, 434:14, 434:18, 435:8, 441:10, 441:13	<b>allegation</b> 80:22	204:17, 217:13, 218:18, 239:13,
<b>agreed</b>	427:3, 427:4, 434:4, 434:10, 434:14, 434:18, 435:8, 441:10, 441:13	<b>alleged</b> 293:17, 294:3, 391:5	249:5, 249:21, 264:14, 281:17, 282:5, 293:17, 297:15, 298:12,
23:16, 23:18, 352:10, 353:22, 354:2, 384:18, 414:5	441:13	<b>allegedly</b> 320:16	301:2, 312:10,
<b>agreeing</b>	<b>agreements</b>	<b>allow</b> 32:2, 100:1, 106:13, 109:11, 319:3, 392:8, 419:11	315:5, 322:4, 332:4, 338:9, 344:7, 352:14, 354:7, 355:1, 370:18, 384:7, 386:13, 392:13, 397:19, 405:12, 432:4, 443:4, 443:12
350:4, 377:2	306:12, 337:14, 381:3, 400:16, 400:17, 419:18	<b>allowed</b> 52:15, 204:16, 205:1	<b>alternate</b> 368:19
<b>agreement</b>	<b>ahead</b>	<b>allowing</b> 100:10, 100:15, 316:4, 385:4	<b>alternative</b> 368:17
61:12, 66:12, 78:21, 87:16, 87:19, 91:3, 97:20, 120:4, 182:8, 212:3, 212:6, 227:19, 227:20, 248:21, 307:6, 335:11, 335:12, 339:5, 345:16, 352:3, 352:4, 352:11, 357:15, 357:17, 358:13, 358:16, 358:18, 358:21, 359:6, 359:9, 359:13, 360:4, 360:7, 371:1, 378:2, 380:4, 380:20, 381:12, 382:18, 384:2, 384:12, 385:1, 385:3, 390:14,	31:11, 75:9, 82:8, 112:2, 113:8, 117:13, 119:10, 151:7, 168:6, 400:5	<b>almost</b> 70:21, 71:5, 128:17, 246:7	<b>although</b> 48:18, 71:2, 73:19, 86:12, 86:18, 91:20, 94:13, 132:2
	<b>aia</b>	<b>alone</b> 441:3, 441:6	<b>altogether</b> 344:8, 441:15
	381:12, 382:15, 383:4	<b>along</b> 50:9, 106:22, 191:18, 233:19, 296:10	<b>always</b> 50:9, 66:11, 76:3, 76:6,
	<b>al</b>	<b>already</b> 13:6, 70:16, 145:16, 199:20, 253:1, 263:20, 280:14, 280:15, 305:1, 312:12, 315:12, 317:2, 379:13, 388:13, 397:11, 416:22, 417:3, 420:2,	84:4, 84:5, 145:22, 222:11, 222:14, 223:9, 223:11, 223:12, 223:13, 240:21, 245:19, 337:15
	<b>alarmingly</b>		<b>amend</b> 394:13, 395:20, 396:1
	347:16		
	<b>alien</b>		
	26:15, 28:21, 29:9, 29:10, 33:5, 38:7, 131:15, 132:1, 132:3, 132:5, 132:11, 132:13,		

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

116

<b>amended</b>	<b>analogy</b>	<b>answering</b>	<b>apologize</b>
37:13, 235:9, 250:16, 363:16, 372:21, 374:4	99:13 <b>analysis</b> 247:9, 438:22, 442:19	25:1, 42:15, 64:6, 64:7, 73:7, 79:21, 117:9, 134:1, 259:12, 399:21	55:18, 57:4, 148:17, 163:2, 173:18, 183:18, 203:6, 210:5, 220:12, 330:12, 381:22, 382:5
<b>american</b>	<b>analyze</b> 275:8	<b>answers</b> 53:18, 118:12, 118:21, 134:15, 173:19, 192:9, 233:5, 256:12, 256:15, 258:18, 294:8, 396:21	<b>apologized</b> 353:10
328:3, 328:4, 328:13	<b>ancillary</b> 188:8	<b>anticipate</b> 109:2	<b>apologizing</b> 353:7
<b>among</b>	<b>announcing</b> 267:9	<b>anticipated</b> 185:21	<b>apology</b> 348:18
222:19	<b>another</b> 38:4, 53:9, 88:15, 89:4, 150:21, 158:10, 160:18, 163:15, 175:7, 175:21, 293:6, 355:8, 355:18, 356:19, 356:22, 357:2, 357:7, 357:10, 367:11, 369:1, 388:4, 388:15, 388:16	<b>anticipation</b> 207:5	<b>apparently</b> 169:1
<b>amongst</b>	<b>answer's</b> 279:19, 363:11, 408:9, 408:18	<b>anybody</b> 107:20, 342:18, 351:2	<b>appeal</b> 17:18, 21:21, 62:22, 63:6, 63:8, 63:9, 63:14, 63:16, 64:10, 64:15, 64:16, 64:17, 64:18, 65:1, 65:4, 65:10, 65:14, 65:17,
182:1, 249:16	<b>answered</b> 22:10, 22:13, 22:22, 25:19, 32:17, 32:18, 75:13, 82:7, 82:8, 82:22, 83:7, 84:7, 134:20, 145:17, 278:10, 279:2, 279:6, 279:12, 279:13, 280:14, 281:8, 281:12, 289:18, 296:14, 297:2, 301:11, 303:4, 316:10, 338:3, 354:3, 359:14, 377:18, 386:6, 397:11, 404:22, 408:14, 408:16, 441:20, 442:17	<b>anything</b> 49:7, 53:2, 107:21, 130:1, 179:11, 193:14, 197:2, 198:12, 256:13, 300:7, 325:5, 387:3, 396:1, 433:7	<b>anyway</b> 35:1, 35:22, 44:14, 103:19, 151:6, 184:15, 222:9, 416:15, 439:14
<b>amount</b>		<b>anyways</b> 25:9	<b>anyway</b> 100:18, 101:5, 129:3, 147:4, 147:6, 151:16, 175:21, 175:22, 176:13, 177:9, 177:12, 177:20, 178:21, 179:7, 179:10, 179:12, 179:13, 179:18, 180:3, 180:6, 180:11, 182:2, 182:13, 182:17,
<b>amounts</b>		<b>apart</b> 238:2	
146:6, 217:1, 405:7, 417:2		<b>apologies</b> 154:12	
<b>amwest</b>			
182:7, 182:8			
<b>amy</b>			
429:9			

CONTAINS CONFIDENTIAL PORTIONS  
12395

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

117

183:1, 183:5, 185:8, 186:2, 188:9, 188:10, 193:14, 193:16, 194:7, 194:8, 197:20, 198:1, 198:2, 198:4, 198:14, 198:18, 201:14, 202:8, 203:13, 203:15, 203:18, 204:5, 212:5, 212:8, 212:9, 213:5 <b>appealed</b> 72:3, 72:4, 146:22, 363:8 <b>appealing</b> 100:14 <b>appeals</b> 27:13, 32:21, 73:10, 74:2, 74:6, 74:10, 74:20, 141:22, 144:10, 174:6, 174:14, 174:17, 174:21, 174:22, 180:13, 181:19, 182:10, 183:10, 184:6, 185:11, 185:14, 185:18, 185:19, 185:22, 186:8, 187:2, 187:3, 187:5, 187:6, 187:9, 188:5, 188:20, 189:2, 189:7, 189:15, 189:17, 190:1, 190:7, 190:8, 190:12, 190:22, 191:20, 192:1, 192:11, 193:10, 193:19, 193:22, 194:2, 195:15, 201:8, 202:1, 202:10, 202:18, 260:21, 260:22, 261:3, 261:5, 261:8,	261:12, 262:7, 262:8, 262:12, 262:19, 263:9, 263:17, 361:11, 363:7 <b>appear</b> 22:6, 22:19, 23:21, 36:8, 43:2, 43:5, 123:10, 127:17, 132:11, 134:4, 135:11, 135:13, 135:18, 136:1, 136:18, 137:16, 140:6, 187:11, 235:11, 235:18, 236:3, 236:4, 236:5, 236:10, 236:11, 236:18, 237:5, 239:5, 252:11, 324:3, 374:5, 430:8, 445:6 <b>appearance</b> 238:5 <b>appearances</b> 132:15, 238:7, 238:15 <b>appearing</b> 43:6, 43:7 <b>appears</b> 71:1, 166:13, 312:4, 347:8, 352:17, 425:20 <b>appellate</b> 59:22, 60:3, 60:12, 64:3, 64:11, 65:20, 251:9 <b>apples</b> 127:12, 127:13, 129:17 <b>applied</b> 83:17 <b>applies</b> 109:20, 267:16 <b>apply</b> 86:18, 189:1,	265:18, 266:15, 267:2, 267:7, 280:8 <b>applying</b> 267:7, 437:5 <b>appointment</b> 427:18, 428:20, 429:16, 430:4 <b>apportion</b> 406:13, 407:13 <b>apportioned</b> 23:10, 359:21, 360:1, 377:9 <b>appreciate</b> 14:6, 42:11, 51:13, 136:16, 174:3, 183:18, 194:1, 209:6, 210:21, 237:21, 317:12, 339:22, 389:5, 389:9 <b>appreciated</b> 340:17, 340:18, 371:12 <b>approach</b> 229:8 <b>appropriate</b> 21:13, 110:22, 111:9, 134:17, 164:4, 188:12, 249:3, 249:4, 358:2, 419:11 <b>appropriately</b> 177:16, 180:8, 180:9, 180:11, 316:14 <b>approved</b> 180:16, 181:2 <b>approximately</b> 152:16, 170:15, 194:19, 194:21, 230:9, 246:14, 249:17, 333:14, 431:16 <b>april</b> 6:14, 163:11, 163:14, 329:22, 330:9, 330:14,	330:18, 330:21 <b>ar</b> 308:4, 310:18, 432:17 <b>arbitrarily</b> 120:7, 121:8, 121:12, 316:5, 318:6 <b>area</b> 37:1, 40:14, 173:17, 173:19, 174:7, 385:13 <b>areas</b> 24:2, 25:7 <b>aren't</b> 27:9, 73:10, 75:14, 75:16, 86:5, 96:21, 104:9, 115:21, 116:1, 123:14, 233:22, 290:17, 290:19, 294:22, 301:1, 416:10, 416:13, 441:11 <b>argue</b> 25:11, 112:16, 374:8, 374:12 <b>argued</b> 299:17, 301:15 <b>arguing</b> 117:18, 220:7 <b>argument</b> 116:2, 125:20, 179:13, 319:20 <b>argumentative</b> 162:22 <b>arguments</b> 201:18 <b>around</b> 228:3, 350:17, 387:7 <b>arrangements</b> 336:20 <b>arrest</b> 36:18, 37:15, 38:2, 38:6, 40:18, 41:14, 41:21, 123:19,
--	---	--	---

CONTAINS CONFIDENTIAL PORTIONS

12396

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

118

124:7, 126:21, 129:7, 136:11, 136:21, 137:2, 137:10, 239:10, 245:13, 422:10 <b>arrested</b> 40:8, 188:3, 267:6, 267:17 <b>arresting</b> 37:2 <b>arrivals</b> 248:2 <b>artfully</b> 366:10, 373:7 <b>article</b> 269:7 <b>articulated</b> 221:16, 223:19, 387:8 <b>articulately</b> 299:20 <b>aside</b> 122:1, 170:22 <b>asked</b> 22:9, 22:12, 22:21, 25:19, 32:16, 41:15, 42:20, 51:6, 74:15, 75:11, 75:14, 81:9, 82:7, 82:8, 82:22, 83:7, 84:7, 102:8, 125:13, 125:16, 147:19, 151:1, 155:13, 155:14, 157:16, 157:17, 159:21, 169:7, 170:5, 191:18, 194:22, 201:19, 202:2, 210:15, 211:20, 215:22, 237:20, 251:7, 251:15, 255:12, 260:18, 260:22, 261:3, 261:5, 261:8, 261:12, 261:14, 261:19,	263:10, 273:21, 277:10, 278:10, 278:20, 279:2, 279:6, 281:8, 281:12, 284:16, 296:14, 297:1, 301:10, 303:4, 303:11, 310:2, 312:15, 316:10, 316:14, 320:18, 325:13, 326:2, 326:4, 338:12, 338:18, 340:19, 352:2, 352:3, 354:3, 355:17, 355:19, 356:18, 360:2, 360:19, 376:4, 377:18, 379:16, 384:22, 394:19, 394:20, 397:4, 398:19, 404:22, 408:13, 411:12, 415:18, 419:20, 428:13, 430:18, 431:4, 441:20, 442:10 <b>asking</b> 18:20, 21:4, 21:5, 31:7, 32:13, 34:15, 51:21, 53:19, 64:10, 78:11, 85:10, 87:20, 104:20, 107:6, 107:8, 110:1, 111:12, 111:14, 112:6, 119:13, 123:1, 123:5, 125:10, 126:3, 126:16, 127:11, 142:22, 156:1, 168:9, 172:5, 201:13, 201:21, 250:10, 270:8, 270:16, 279:7, 279:9, 281:3, 281:6, 284:14, 284:18, 285:7,	296:19, 305:19, 308:13, 309:17, 325:9, 353:21, 354:13, 356:12, 358:6, 361:10, 362:15, 363:7, 366:18, 369:21, 376:10, 394:9, 394:22, 395:11, 395:22, 403:6, 408:12, 408:14, 409:4, 420:10, 424:1, 440:4, 440:10 <b>aspects</b> 205:22, 221:14, 331:2 <b>assert</b> 40:16, 182:1, 205:4, 354:1, 439:14 <b>asserted</b> 284:22 <b>asserting</b> 20:15, 114:2, 249:15, 318:6, 318:16, 385:16, 393:10, 435:14 <b>assertion</b> 352:19 <b>asserts</b> 383:13 <b>assessed</b> 221:7 <b>assessment</b> 199:15 <b>asset</b> 303:15 <b>assets</b> 236:16, 291:10, 291:22, 292:4, 304:2, 304:17, 305:6, 305:12, 305:15, 305:17, 306:1, 306:11, 327:22, 328:10, 336:10, 336:13, 336:16, 337:1,	337:3, 337:5, 337:8, 337:17, 338:2, 338:7, 338:12, 338:13, 432:6, 432:21, 433:15 <b>assist</b> 12:16, 210:10, 210:11, 246:9 <b>assisted</b> 208:9, 209:11, 209:14, 210:8 <b>associates</b> 3:13 <b>assume</b> 285:2, 351:3 <b>assumes</b> 106:8 <b>assuming</b> 68:9, 104:6, 343:4, 343:7 <b>assurance</b> 110:12 <b>atlanta</b> 3:16 <b>attached</b> 5:7, 11:15, 67:12, 85:4, 88:8, 131:13, 138:4, 156:18, 158:5, 158:9, 163:13, 216:11, 256:21, 286:8, 294:2, 297:13, 315:17, 322:12, 339:3, 341:11, 343:12, 348:7, 371:22, 401:1, 414:18, 425:5, 427:8, 445:7 <b>attachments</b> 313:16 <b>attack</b> 423:7 <b>attacks</b> 438:2 <b>attempted</b> 442:5
---	---	---	---

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

119

<b>attempting</b>	246:4, 248:16, 393:21, 443:1	172:21, 173:3, 178:11, 185:1, 214:1, 215:12, 247:4, 251:15, 259:10, 260:6, 272:17, 275:7, 276:12, 286:11, 311:6, 331:13, 332:15, 359:15, 360:13, 362:13, 366:7, 366:15, 369:17, 373:15, 409:15, 424:16, 425:9	294:12, 298:20, 299:1, 309:8, 309:9, 310:3, 310:5, 310:6, 310:9, 310:19, 333:10, 333:11, 333:20, 338:4, 338:7, 338:8, 338:9, 338:15, 338:16, 374:22, 375:1, 383:4
<b>attenti</b>	432:17	<b>balances</b>	87:8
<b>attention</b>	149:15	<b>ball</b>	169:8
<b>attorney</b>	86:2, 159:8, 160:2, 161:16, 180:5, 194:13, 198:7, 198:22, 199:8, 203:16, 208:15, 209:5, 257:20, 264:5, 271:16, 287:5, 293:10, 293:11, 305:4, 315:22, 316:3, 316:5, 316:6, 381:6, 407:22, 410:8, 411:18, 413:3, 421:6	<b>bank</b>	300:15, 440:6
<b>attorney-client</b>	159:1, 201:17, 201:18, 204:4, 207:1, 207:9, 314:5, 314:8	<b>bar</b>	179:14, 327:9
<b>attorneys</b>	314:9	<b>barb</b>	6:13
<b>audited</b>	157:2, 161:10, 391:3, 405:9, 405:11, 407:21, 408:3, 408:7, 409:2, 431:17, 434:3, 434:9, 435:7	<b>barring</b>	225:20
<b>august</b>	275:15, 275:21, 276:3, 276:6, 276:16, 282:1, 282:11, 282:14	<b>base</b>	311:17, 329:11, 338:18
<b>available</b>	69:7, 69:12	<b>bases</b>	314:18, 318:9, 409:1, 439:18
<b>authority</b>	255:21, 304:13	<b>basic</b>	75:21, 113:20
<b>authorization</b>	150:20, 326:22	<b>basically</b>	89:21, 116:1, 196:10, 280:22
<b>avenue</b>	<b>B</b>	<b>basing</b>	294:7
<b>average</b>	<b>b) (6</b>	<b>basis</b>	38:17, 66:5, 66:15, 66:19, 154:13, 154:15, 186:18, 187:10, 187:21, 190:15, 190:16, 201:2, 201:9, 201:11, 203:21, 204:3, 204:14, 205:18, 205:19, 211:13, 263:17, 278:13,
92:20, 245:6, 245:20, 245:22,	5:10, 9:3, 11:8, 11:20, 12:6, 12:12, 14:7, 31:1, 149:15, 152:13, 166:1, 207:3, 317:14	<b>bail</b>	33:20, 37:5, 37:6, 37:10, 37:22, 39:3, 129:18, 306:17, 306:19, 381:20
	<b>back</b>	<b>balance</b>	14:3, 104:5, 291:9, 292:18, 293:2, 294:9,

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

120

302:8, 318:7, 318:8, 318:16, 318:18, 328:5, 377:14, 385:9, 408:6 <b>bates</b> 5:20, 6:5, 6:19, 7:7, 7:10, 7:21, 8:7, 8:10, 8:13, 292:5 <b>became</b> 79:19, 316:20, 411:6, 413:13 <b>become</b> 221:17, 243:13, 302:22 <b>becomes</b> 63:22 <b>before</b> 2:13, 18:14, 36:8, 42:17, 44:10, 51:14, 64:17, 67:15, 75:18, 78:18, 85:7, 86:3, 121:3, 145:21, 158:18, 176:3, 177:16, 185:4, 186:3, 186:22, 188:3, 226:10, 228:9, 229:3, 251:5, 258:19, 260:9, 265:14, 265:20, 266:22, 268:2, 268:15, 282:21, 283:2, 283:7, 294:17, 295:5, 297:4, 314:21, 315:21, 334:11, 334:14, 365:10, 369:20, 379:3, 382:9, 388:1, 389:2, 391:8, 393:7, 395:8, 427:10, 432:10, 442:18, 446:3 <b>began</b> 274:19, 349:3,	386:19 <b>beginning</b> 27:2, 43:22, 248:8, 367:14, 410:19, 411:21 <b>begins</b> 9:2 <b>begun</b> 264:9 <b>behalf</b> 3:2, 3:11, 9:19, 9:21, 9:22, 10:3, 10:6, 10:11, 12:11, 18:3, 21:1, 165:19, 209:2, 377:3, 377:15, 378:3, 378:20, 401:3, 401:10 <b>behavior</b> 132:16, 215:4, 215:6, 344:18, 441:17 <b>being</b> 10:17, 27:19, 29:19, 40:8, 70:17, 73:10, 74:2, 75:15, 77:19, 85:12, 92:1, 124:22, 135:5, 148:12, 155:6, 162:21, 193:20, 204:21, 206:8, 229:5, 242:9, 245:22, 259:1, 267:3, 267:4, 267:16, 289:19, 302:19, 320:21, 326:12, 338:11, 351:3, 355:2, 361:6, 370:15, 374:20, 378:11, 378:14, 389:5, 395:17, 396:11, 402:7, 412:9, 413:4, 415:17	<b>beings</b> 81:18 <b>belie</b> 413:19 <b>belief</b> 62:12, 278:20 <b>believe</b> 16:5, 18:11, 21:13, 38:21, 44:2, 55:14, 61:3, 67:18, 68:10, 68:16, 80:13, 89:11, 90:22, 134:20, 160:5, 161:12, 163:19, 173:14, 180:19, 180:20, 185:5, 186:10, 186:11, 194:15, 195:9, 197:5, 200:8, 212:6, 212:8, 225:15, 229:12, 231:1, 232:2, 239:22, 240:8, 250:13, 257:10, 263:19, 273:21, 278:11, 278:13, 279:3, 284:8, 287:1, 287:12, 292:16, 298:9, 298:11, 298:12, 306:4, 307:8, 308:19, 310:4, 310:9, 312:9, 332:3, 341:19, 341:20, 353:13, 358:16, 358:18, 359:8, 359:18, 360:7, 368:5, 374:7, 378:21, 382:8, 382:17, 384:5, 388:2, 388:3, 419:22, 433:6 <b>believed</b> 107:7, 347:4, 352:21 <b>believes</b> 278:1, 278:7,	422:6 <b>bellinger</b> 1:22, 2:14, 10:13, 446:2 <b>below</b> 132:12, 147:1, 340:6 <b>benefit</b> 17:13, 267:15 <b>benefits</b> 265:13, 265:16, 265:18, 266:15, 267:2, 267:7, 267:8 <b>best</b> 62:11, 87:20, 88:2, 88:4, 97:12, 146:2, 183:22, 186:12, 376:7, 401:7, 401:11 <b>better</b> 58:13, 111:3, 174:7, 361:19 <b>between</b> 20:9, 40:7, 49:19, 57:9, 174:14, 200:3, 200:9, 208:13, 211:11, 247:6, 264:16, 294:12, 319:22, 323:6, 342:16, 349:5, 350:5, 357:15, 358:20, 359:6, 359:13, 360:15, 360:20, 373:11, 387:9, 399:10, 400:12, 410:1, 412:8, 418:14, 437:14 <b>beyond</b> 24:2, 65:20, 181:6, 282:2, 282:12, 282:15, 282:16, 434:7 <b>biden</b> 332:10
--	--	---	--

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

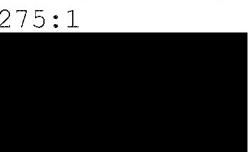
121

<b>big</b> 73:11, 74:3, 74:19, 75:15, 100:12, 193:9, 194:3, 200:12, 306:22, 307:2	<b>blind</b> 91:18	427:15	216:19, 227:16, 229:4, 229:6, 229:18, 229:22, 233:14, 249:11, 251:12, 301:1, 334:5, 337:6, 337:13, 337:14, 346:8, 346:11, 347:21, 356:6, 362:7, 383:20, 436:5, 436:6, 436:13, 436:14
<b>bigger</b> 315:20	<b>blows</b> 347:13	<b>bounty</b> 37:1, 39:1, 422:11	251:12, 301:1, 334:5, 337:6, 337:13, 337:14, 346:8, 346:11, 347:21, 356:6, 362:7, 383:20, 436:5, 436:6, 436:13, 436:14
<b>biggest</b> 87:14	<b>board</b> 182:15	<b>box</b> 4:5, 45:11, 49:13, 51:8	<b>break</b> 16:8, 32:12, 43:13, 54:3, 75:20, 80:10, 120:16, 120:18, 121:3, 147:17, 150:15, 171:10, 172:20, 173:7, 182:20, 184:2, 184:10, 184:18, 185:4, 186:4, 191:3, 191:16, 191:17, 192:8, 199:3, 232:5, 232:21, 233:2, 233:4, 233:17, 235:4, 255:3, 258:9, 258:12, 258:14, 258:16, 258:19, 260:9, 278:1, 278:2, 293:10, 311:1, 369:20, 424:10, 432:11
<b>bigmarcobonds@gm-</b> <b>ail</b> 6:8, 6:11, 6:14	<b>bond's</b> 270:15	<b>bracelet</b> 248:15	<b>breezing</b> 425:7
<b>bill</b> 120:14, 217:7, 218:15, 219:11, 219:19, 220:18, 220:21, 221:10, 250:7, 333:15, 333:16, 435:3	<b>bonded</b> 32:22, 121:18, 130:20	<b>bracelets</b> 243:7	<b>brief</b> 179:19
<b>billed</b> 392:13	<b>bonding</b> 123:11, 123:12, 222:20, 306:20,	<b>breached</b> 17:17, 23:4, 32:20, 35:2,	<b>briefly</b> 265:6, 433:14
<b>bills</b> 435:2	<b>bonnie</b> 381:18	36:1, 54:10, 101:16, 104:6, 104:7, 104:8, 104:11, 105:11, 105:13, 105:19, 108:21, 111:7, 113:5, 125:10, 126:20, 128:5, 136:7, 138:21, 139:5, 140:3, 140:5, 140:18, 196:9, 229:5	<b>brigman</b> 418:15, 419:9, 423:16, 443:11, 443:13
<b>binder</b> 48:16, 48:17, 50:20	<b>booking</b> 273:4	<b>breaches</b> 26:1, 55:1, 59:8, 71:21, 72:2, 79:2, 79:3, 79:5, 99:1, 100:4, 100:8, 100:11, 100:13, 101:14, 102:14, 106:14, 116:16, 120:8, 121:14, 121:19, 123:4, 125:18, 125:19, 132:18, 141:17, 141:18, 141:20, 141:22, 155:8, 175:10, 190:2, 191:1, 192:1, 210:20,	<b>bring</b> 12:15, 162:9,
<b>binders</b> 45:20, 46:1, 46:2, 50:21, 54:14, 54:22, 55:2, 55:6	<b>books</b> 115:12, 272:4, 272:9, 272:19, 273:16, 273:22, 274:9, 338:22, 339:6, 339:13, 385:4, 390:13, 409:20, 410:11, 413:7, 415:12, 426:1, 426:21, 427:22, 428:14, 429:11		
<b>binds</b> 112:12	<b>both</b> 190:8, 190:9, 201:13, 202:8, 233:15, 314:21, 322:13, 386:7, 391:11, 423:22		
<b>bio</b> 43:12, 120:16, 172:19, 311:1	<b>bothered</b> 344:14		
<b>bit</b> 14:10, 48:6, 51:11, 197:15, 290:15, 386:22	<b>bottom</b> 70:12, 372:2,		
<b>bits</b> 20:17			
<b>blanket</b> 125:14			
<b>blew</b> 350:1			

## Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

122

228:9, 228:17, 246:11, 248:17, 402:11, 405:15	<b>butchering</b> 55:19	195:17, 205:13, 230:3, 342:13, 354:14, 372:3, 401:22, 402:1, 402:6, 402:7, 402:8, 402:12	263:1, 276:3, 276:11, 294:19, 295:3, 304:21, 315:7, 331:6, 338:14, 359:20, 392:21, 408:19, 409:3, 432:2
<b>bringing</b> 246:10, 247:20, 326:20	<b>C</b>	<b>called</b> 177:20, 178:9, 200:22, 207:13, 401:21, 401:22	<b>cancel</b> 29:12, 29:14, 33:13, 34:18, 67:2, 102:4, 163:16, 198:5
<b>broke</b> 278:11, 278:12, 279:3	<b>calculated</b> 96:6, 96:7, 114:11, 114:13, 396:16, 431:12, 431:16, 431:20, 435:15, 436:19, 437:22	<b>calling</b> 42:6, 242:8	<b>canceled</b> 16:18, 16:21, 17:11, 17:15, 17:16, 18:21, 19:6, 21:10, 28:17, 29:21, 30:3, 30:6, 30:15, 32:14, 33:2, 34:20, 44:13, 49:22, 50:13, 70:1,
<b>broken</b> 152:14, 434:4	<b>calculates</b> 112:4, 113:17	<b>came</b> 53:17, 209:17, 341:20	93:9, 94:3, 94:17, 95:2, 116:6, 116:14, 120:15, 151:16, 153:10, 153:16, 153:18, 155:8, 155:11, 158:2, 158:12, 158:21, 159:11, 159:20, 160:16, 160:17, 215:9, 215:14, 216:5, 227:1, 362:22, 363:3, 370:20, 380:10, 382:4, 392:12, 428:5, 443:6
<b>brother</b> 239:13	<b>calculating</b> 17:14, 95:14, 96:17, 97:2, 98:8, 98:13, 104:22, 105:3, 105:9, 113:2, 113:16, 114:12, 436:3	<b>can't</b> 17:18, 27:15, 50:21, 51:5, 51:7, 52:13, 57:21, 58:4, 65:12, 94:4, 107:21, 110:15, 122:20, 126:6, 126:7, 129:2, 144:11, 144:12, 145:2, 145:7, 145:11, 152:9, 153:19, 159:22, 172:16, 178:11, 181:6, 199:17, 203:6, 204:7, 204:9, 211:9, 222:3, 236:13, 238:8, 246:10, 254:2, 254:17, 254:19, 259:5,	<b>cancellation</b> 18:12, 18:13, 20:19, 21:6, 35:18, 73:3, 91:6, 92:7, 92:18, 116:8, 153:12, 153:19, 154:5, 154:8, 155:17, 156:7,
<b>brought</b> 13:2, 13:10, 14:16, 47:11, 72:12, 123:20, 129:7, 292:8, 293:8, 327:7, 402:9	<b>calculation</b> 99:18, 104:5, 110:18, 112:9, 113:21, 114:3, 171:13, 397:15, 434:22, 438:17, 438:19, 439:6, 439:11	<b>calendar</b> 128:8, 208:22, 275:1	
<b>bucket</b> 95:9, 232:21	<b>calculations</b> 110:17, 110:20, 114:20, 115:13		
<b>buckets</b> 197:15	<b>calendar</b> 128:8, 208:22, 275:1	<b>call</b> 132:6, 184:14,	
<b>buddi</b> 246:13, 248:4, 298:19, 333:4, 336:13, 336:16, 336:17, 336:20, 336:21			
<b>built</b> 38:22, 306:14			
<b>bullet</b> 31:3			
<b>bunch</b> 258:13			
<b>burnt</b> 88:10			
<b>business</b> 49:5, 49:10, 57:6, 106:12, 115:9, 115:12, 329:20, 329:21, 330:17, 331:2, 335:6, 344:13, 354:13, 361:5, 361:14, 411:9, 418:3			

CONTAINS CONFIDENTIAL PORTIONS

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

123

157:5, 157:7, 158:22, 160:4, 161:7, 161:13, 161:21, 164:18, 165:13, 166:11, 166:20, 168:19, 169:10, 169:18, 170:11, 171:2, 171:6, 192:13, 192:15, 192:17, 192:22, 215:15, 215:22, 216:4, 392:15	384:8, 402:3, 402:15, 402:20 <b>card</b> 328:13 <b>cards</b> 327:21 <b>care</b> 102:6, 112:10, 216:8, 253:5, 327:13, 327:15 <b>cared</b> 414:13 <b>careful</b> 67:4, 176:7 <b>caring</b> 354:14 <b>case</b> 1:7, 9:9, 21:11, 22:15, 29:17, 58:9, 58:15, 59:4, 59:10, 67:3, 71:15, 76:9, 76:13, 76:17, 77:10, 77:11, 77:13, 77:15, 77:16, 83:19, 92:3, 97:9, 97:13, 97:15, 122:10, 122:13, 123:20, 124:17, 125:9, 128:4, 128:11, 133:8, 140:4, 146:20, 179:2, 188:11, 209:21, 212:22, 221:14, 224:2, 225:6, 225:16, 245:3, 245:4, 256:4, 265:12, 265:14, 265:19, 266:12, 266:13, 266:14, 266:22, 267:1, 267:20, 268:15, 269:18, 270:19, 287:8, 287:11, 299:16, 301:15, 382:14,	388:3, 401:17, 402:6, 405:15, 446:10 <b>case-by-case</b> 38:17, 201:8, 201:11, 204:14 <b>cases</b> 63:18, 71:4, 82:10, 95:15, 125:4, 128:14, 140:5, 194:19, 194:21, 202:22, 210:8, 210:10, 210:12, 210:18, 226:21, 269:5, 311:20 <b>cash</b> 146:17, 236:20, 250:18, 275:12, 276:5, 327:22, 328:1, 328:2, 328:6, 381:10, 381:11, 382:6, 433:18, 433:20, 434:1 <b>cashed</b> 215:11 <b>castalano</b> 7:12 <b>cat</b> 220:13, 220:14, 222:15, 222:16, 237:15 <b>catch</b> 193:5 <b>categories</b> 12:4, 13:14, 181:10, 334:17, 397:5 <b>category</b> 56:21, 175:7 <b>cats</b> 222:9, 222:10, 222:14 <b>cause</b> 120:5, 133:1, 135:17, 250:18, 402:16	<b>caused</b> 100:8, 185:8, 431:14 <b>caution</b> 59:7, 155:20, 228:8, 344:10, 425:12 <b>caveat</b> 198:2 <b>caveats</b> 284:4 <b>cc'd</b> 415:4 <b>cc-mfu</b> 9:10 <b>cease</b> 193:18, 248:4, 329:13, 330:16, 330:17, 373:17 <b>center</b> 178:10, 401:22, 402:7, 402:9, 402:12 <b>cents</b> 97:3, 436:12 <b>ceo</b> 78:15 <b>certain</b> 34:11, 53:2, 59:3, 64:13, 66:20, 140:1, 141:15, 141:17, 142:14, 153:17, 159:11, 180:21, 205:22, 221:14, 331:1, 367:9, 374:18, 388:18, 402:11, 404:9, 408:10 <b>certainly</b> 18:5, 30:11, 46:21, 48:6, 48:12, 48:18, 71:1, 72:9, 72:14, 76:10, 86:18, 95:17, 107:22, 129:9, 132:21, 137:9,
---	--	--	---

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

124

137:13, 154:3, 158:17, 181:11, 202:6, 209:6, 228:5, 240:11, 256:19, 300:7, 305:12, 324:14, 325:3, 325:16, 326:8, 333:22, 342:17, 346:12, 365:16, 366:16, 367:4, 373:8, 373:22, 410:22, 412:8, 416:4, 425:20, 430:1, 434:14, 435:4 <b>certificate</b> 446:1 <b>certified</b> 2:15 <b>certify</b> 446:4 <b>cetera</b> 235:19 <b>cfr</b> 17:22, 60:15, 60:22, 65:5 <b>chain</b> 5:18, 6:3, 6:16, 7:11, 7:14, 8:8, 8:11, 323:8 <b>challenge</b> 45:7, 125:4, 252:4, 252:5, 324:2, 325:21, 326:7 <b>chance</b> 19:18, 21:11, 223:21, 330:10 <b>change</b> 15:19 <b>changed</b> 287:18, 331:1 <b>changes</b> 271:17 <b>changing</b> 380:9 <b>charges</b> 219:2, 221:3,	221:6 <b>charming</b> 432:3 <b>chart</b> 68:15, 78:9, 86:7, 88:15, 89:4, 89:8, 89:10, 89:12, 89:14, 90:20 <b>chase</b> 258:17 <b>chaszar</b> 4:19, 10:7 <b>check</b> 48:18, 180:20, 185:6, 215:11, 244:22, 334:7, 361:1, 379:6, 379:7, 380:10 <b>checks</b> 57:3, 57:4, 361:11, 382:11 <b>chief</b> 225:12 <b>child's</b> 366:19 <b>children</b> 422:14 <b>chip</b> 379:21 <b>chocolate</b> 379:21 <b>choice</b> 43:7 <b>chooses</b> 426:20 <b>chose</b> 250:14, 357:19, 370:6 <b>chris</b> 4:3, 7:11, 10:5, 379:18 <b>christopher</b> 3:4, 9:20 <b>circumstance</b> 29:3, 66:7,	195:5 <b>circumstances</b> 29:4, 38:18, 66:21, 140:1, 140:3, 195:5, 199:7, 209:5, 319:10, 383:12, 396:4, 422:3 <b>cite</b> 199:13, 349:12 <b>citizenship</b> 266:1 <b>claim</b> 17:17, 17:19, 19:2, 19:21, 21:20, 27:19, 28:6, 47:22, 50:16, 58:15, 59:18, 59:20, 59:21, 60:2, 60:4, 60:6, 60:10, 60:11, 60:16, 61:14, 61:15, 62:17, 62:19, 62:21, 63:3, 63:22, 64:1, 65:5, 65:8, 65:9, 99:22, 138:14, 142:1, 142:2, 144:6, 144:9, 147:7, 212:5, 221:17, 344:9, 344:20, 346:6, 359:10, 362:18 <b>claim's</b> 362:16 <b>claiming</b> 409:2 <b>claims</b> 345:9, 347:16, 355:2, 365:10 <b>clarification</b> 15:6, 190:4 <b>clarified</b> 193:19 <b>class</b> 413:8	<b>clause</b> 399:9 <b>clear</b> 20:8, 40:13, 41:18, 62:5, 62:13, 67:5, 121:7, 127:4, 165:6, 165:9, 168:15, 188:19, 191:13, 195:4, 198:9, 204:22, 232:14, 244:19, 272:1, 272:22, 274:17, 284:8, 284:11, 287:19, 300:14, 368:10, 370:15, 372:17, 373:14, 388:10, 391:8, 391:13, 410:22, 413:1, 413:13, 433:5, 442:13 <b>clearly</b> 23:12, 121:15, 219:15, 392:9 <b>client</b> 13:19, 15:13, 16:16, 16:19, 39:9, 50:4, 50:5, 50:8, 69:18, 71:17, 72:19, 72:21, 78:1, 82:16, 87:18, 91:14, 92:11, 95:4, 100:1, 100:3, 100:4, 109:10, 109:11, 125:3, 127:21, 134:3, 136:17, 147:10, 153:11, 157:18, 160:11, 193:18, 195:21, 211:10, 212:21, 213:11, 213:16, 224:15, 226:22, 240:18, 240:19, 241:22, 249:9, 252:4,
--	---	---	---

CONTAINS CONFIDENTIAL PORTIONS

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

125

277:4, 288:15, 288:16, 297:6, 329:11, 353:14, 363:3, 363:4, 363:5, 369:11, 376:21, 377:4, 377:6, 378:10, 378:13, 378:15, 397:21, 412:22, 414:14, 421:20, 421:22, 422:6, 424:1, 438:5, 441:6 <b>client's</b> 16:17, 23:13, 91:18, 163:22, 351:10, 375:4, 375:6, 377:19, 377:21 <b>client-confidential</b> 421:17 <b>client-sensitive</b> 415:16 <b>client-specific</b> 427:5 <b>clients</b> 16:20, 17:4, 92:2, 157:22, 243:13, 252:8, 308:6, 329:9, 335:2, 384:3, 384:6, 384:8, 384:11, 391:16, 391:22, 403:16, 411:12, 413:21, 418:5, 421:21, 437:8, 441:6 <b>close</b> 278:2, 278:12, 291:12 <b>closed</b> 29:17, 95:15, 266:22, 268:14, 268:15 <b>closer</b> 291:14, 295:22, 296:4, 296:6	<b>closing</b> 440:6 <b>club</b> 290:16 <b>co-obligator</b> 102:7 <b>co-obligor</b> 36:15, 36:17, 37:19, 38:1, 39:4, 71:9, 100:17, 124:18, 129:19, 129:20, 193:20, 193:22, 205:3, 212:8 <b>co-obligors</b> 37:15, 133:20 <b>co-worker</b> 239:13 <b>coding</b> 88:9, 88:11 <b>coffee</b> 369:5 <b>cold</b> 340:1 <b>collateral</b> 248:21, 250:18, 306:12, 307:6, 343:15, 346:1, 355:16, 355:18, 357:14, 358:17, 358:19, 359:5, 359:7, 359:12, 360:1, 367:10, 368:4, 368:17, 370:5, 370:13, 371:15, 372:14, 373:18, 374:13, 374:15, 374:21, 375:3, 375:8, 375:11, 375:20, 376:19, 377:2, 377:10, 377:12, 377:14, 378:3, 378:7, 378:11, 378:19, 379:4, 379:9, 380:2, 380:3, 380:5, 380:6, 380:7,	380:9, 380:14, 380:20, 381:1, 381:3, 381:7, 381:10, 381:12, 381:14, 382:1, 382:6, 386:14, 386:16, 387:15, 387:17, 387:21, 390:3, 390:8, 391:9, 404:20, 405:2, 405:3, 406:2, 406:5, 406:10, 406:19, 407:9 <b>collect</b> 17:9, 236:8 <b>collected</b> 166:17, 169:11, 328:20, 441:11 <b>collecting</b> 337:11 <b>collection</b> 432:18 <b>collective</b> 386:9 <b>college</b> 10:7 <b>color</b> 88:9, 88:11 <b>com</b> 5:19, 6:8, 6:11, 6:14, 6:18, 7:20 <b>combined</b> 277:4, 288:15, 288:17 <b>come</b> 20:11, 34:7, 40:22, 49:6, 76:20, 103:17, 108:11, 133:19, 146:1, 178:11, 191:8, 208:13, 361:18, 402:13, 427:16, 428:10, 428:16, 430:2, 430:7 <b>comes</b> 20:11, 21:20,	39:11, 154:4, 213:12, 214:2, 267:16 <b>coming</b> 16:17, 40:8, 367:22, 377:13, 427:20, 428:7, 429:17, 437:3 <b>comment</b> 262:4, 355:8 <b>commercial</b> 401:2 <b>commission</b> 375:20, 378:8, 446:16 [REDACTED] <b>commissioner's</b> 329:18 <b>commissions</b> 359:21, 374:18, 375:7, 376:11, 376:16, 378:20, 378:22 <b>committed</b> 432:8 <b>communications</b> 349:18 <b>common</b> 322:15 <b>commonwealth</b> 2:16, 446:22 <b>communicate</b> 77:4, 92:2, 266:2, 349:4, 350:14, 355:10, 356:5, 384:7, 384:9, 437:7 <b>communicated</b> 107:22, 227:17, 356:10, 366:10, 367:8, 369:21, 370:3 <b>communicates</b> 132:22 <b>communicating</b> 137:6, 344:8, 347:7, 351:14,
---	--	--	--

CONTAINS CONFIDENTIAL PORTIONS  
12404

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

126

352:20, 354:2, 362:11, 405:21, 406:13 <b>communication</b> 158:10, 193:5, 203:17, 203:20, 206:13, 206:16, 206:19, 257:9, 276:18, 282:22, 310:4, 315:3, 344:15, 344:20, 347:9, 348:21, 349:13, 350:13, 351:14, 353:8, 353:12, 360:22, 361:4, 363:20, 365:10, 365:11, 365:19, 366:9, 366:12, 372:16, 373:11, 374:17, 419:1, 420:6, 425:13, 427:20 <b>communications</b> 155:20, 200:18, 202:21, 203:4, 203:5, 204:6, 204:7, 211:11, 211:17, 348:14, 349:1, 350:5, 350:15, 350:20, 360:14, 360:19, 360:20, 361:10, 362:6, 362:12, 362:13, 365:7, 365:9, 365:20, 366:1, 366:5, 373:14, 381:2, 391:22, 405:5, 405:19, 410:20, 410:21, 439:3 <b>community</b> 146:4, 246:10, 246:11, 308:9, 438:13 <b>comp</b> 329:8 <b>company</b> 1:5, 9:6, 9:19,	25:9, 57:16, 106:11, 112:11, 112:12, 112:18, 123:11, 123:13, 135:6, 222:20, 272:2, 273:2, 274:21, 275:18, 275:20, 300:11, 337:12, 342:19, 381:18, 382:2, 390:15, 422:17, 438:3, 441:16 <b>company's</b> 42:16 <b>compare</b> 297:17 <b>compared</b> 379:21 <b>comparing</b> 442:22 <b>compel</b> 195:6, 405:7 <b>compelled</b> 371:2 <b>compels</b> 34:7 <b>competent</b> 412:9 <b>compile</b> 16:22 <b>complaint</b> 117:19, 231:11, 235:9, 372:21 <b>complement</b> 264:15, 300:6, 313:3, 313:5 <b>complete</b> 118:17, 284:5, 284:7, 284:9, 288:20, 290:20, 445:5 <b>completed</b> 276:21, 277:1, 280:17 <b>completely</b> 21:11, 59:22, 113:12, 243:9, 273:4, 286:10,	301:16, 356:13, 361:4, 390:18 <b>completing</b> 271:14, 284:10, 288:6 <b>compliance</b> 145:3, 145:12, 149:15, 179:10, 179:13, 228:9, 228:18, 243:17 <b>compliant</b> 87:16, 275:14, 276:7, 276:8, 282:1, 283:19 <b>complicated</b> 116:17 <b>complied</b> 80:15, 81:4, 124:19, 124:20, 179:9, 357:1 <b>comply</b> 87:14, 87:18, 139:20, 142:17, 142:20, 144:18, 144:19, 144:21, 144:22, 145:20, 146:3, 167:3, 219:16 <b>complying</b> 211:4, 299:16 <b>computer-generated</b> 54:19 <b>conceivably</b> 46:3 <b>concept</b> 108:6 <b>concern</b> 62:2, 87:14, 249:9, 325:4 <b>concerned</b> 56:21, 102:13, 365:12, 386:22 <b>concerning</b> 317:10, 331:13, 425:14, 431:5 <b>concerns</b> 248:18, 277:3,	331:6, 340:5, 355:12, 365:22, 411:11, 426:11 <b>conclusion</b> 18:6, 36:21, 408:14, 408:19, 409:3, 440:2, 440:3, 440:11 <b>conclusions</b> 204:4 <b>condition</b> 33:7, 33:9, 130:11, 130:15, 139:1, 142:4, 142:7, 143:8, 143:18, 271:11, 274:14, 279:11, 283:21, 289:5, 295:14, 296:5, 296:12, 296:22, 301:8, 303:3, 309:1 <b>conditioned</b> 426:14 <b>conditions</b> 33:4, 141:10, 141:13, 141:14, 142:6, 143:7, 144:1, 146:3, 182:14, 243:11 <b>conduct</b> 419:12, 442:20 <b>conducted</b> 240:20 <b>conference</b> 200:22, 372:3 <b>confident</b> 204:15, 275:16, 315:11, 317:14, 337:21 <b>confidential</b> 1:15, 252:9, 331:14, 413:8, 413:14, 415:22, 417:12, 417:15, 418:9, 418:10, 418:21, 420:20, 441:8, 441:9
--	--	--	---

CONTAINS CONFIDENTIAL PORTIONS  
12405

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

127

<b>confidentiality</b>	<b>confusing</b>	363:6	312:15, 314:12,
339:18, 352:2,	170:6	345:13, 345:14,	
352:3, 352:11,	<b>confusion</b>	359:5, 360:14,	
384:2, 384:12,	17:13, 221:9,	383:13, 422:3,	
384:18, 385:1,	225:1	437:15	
385:3, 390:14,	<b>congratulations</b>	<b>contentions</b>	
391:15, 399:6,	92:3	319:11	
399:9, 400:13,	<b>connecticut</b>	<b>contest</b>	
401:13, 405:6,	4:11	71:22, 100:4,	
407:6, 410:14,	<b>consequences</b>	100:11, 100:16,	
410:18, 411:6,	222:18	101:2, 102:8,	
411:13, 411:17,	<b>conservative</b>	102:9, 102:14,	
411:19, 412:3,	438:20, 438:21,	102:17, 106:13,	
412:5, 412:15,	440:19	109:11, 120:8,	
412:20, 412:21,	<b>consider</b>	121:13, 121:22,	
413:4, 413:17,	23:8, 26:10,	122:15, 125:18,	
414:5, 414:7,	38:17, 59:20,	194:22, 203:10,	
414:14, 415:15,	99:7, 114:5,	203:22, 204:17,	
415:20, 417:10,	201:8, 201:10,	204:20, 219:18,	
417:11, 417:16,	307:16, 334:6,	220:3, 392:8	
418:2, 419:18,	335:1, 421:13	<b>contested</b>	
420:17, 421:3,	<b>consideration</b>	122:17, 333:10	
421:7, 421:12,	104:10, 283:17	<b>contesting</b>	
426:7, 426:11,	<b>considered</b>	27:15, 100:12,	
426:12, 426:15,	63:16, 64:19,	100:21	
427:4, 431:18,	99:2, 176:1,	<b>context</b>	
434:3, 434:9,	232:1	365:6	
434:14, 434:18,	<b>considering</b>	<b>contingent</b>	
435:8, 437:9,	51:2, 249:1	371:6	
441:10, 441:12	<b>considers</b>	<b>continuation</b>	
<b>confidently</b>	215:4	268:17, 356:18	
439:16	<b>consistent</b>	<b>continue</b>	
<b>confirm</b>	29:13, 47:21,	59:6, 91:21,	
48:12, 68:5,	60:20, 67:5,	122:20, 122:21,	
94:4, 367:3,	161:9, 161:21,	123:17, 134:22,	
382:14, 382:16	162:3, 182:15,	159:5, 161:5,	
<b>confirmed</b>	201:11, 216:18,	168:11, 170:5,	
192:1, 192:14	231:17, 328:17,	224:6, 227:2,	
<b>confirming</b>	362:12, 362:13,	230:14, 269:1,	
343:2	393:20, 411:5,	271:18, 291:13,	
<b>confirms</b>	411:20, 420:19,	296:7, 318:20,	
426:7	435:18, 436:4,	331:4, 355:21,	
<b>confuse</b>	436:21, 443:3	355:22, 367:10,	
357:22	<b>consistently</b>	367:15, 368:2,	
<b>confused</b>	82:19, 210:19,	371:2, 398:17,	
88:14, 130:22,	363:7, 363:9	398:18, 419:15,	
148:5, 148:7,	<b>constantly</b>	436:18	
149:22, 269:12	362:5, 362:8,	<b>continued</b>	
		106:14, 106:17,	

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

128

213:10, 287:17, 371:3, 372:13, 400:4 <b>continues</b> 329:20 <b>continuing</b> 209:21, 210:14, 225:11, 294:18, 295:17, 295:20, 297:6, 300:14, 300:15, 301:3, 304:7, 305:3 <b>continuous</b> 71:20, 72:1 <b>contract</b> 35:12, 142:9, 207:10, 207:12, 252:19, 275:3, 275:8, 283:14, 376:21, 385:19, 385:20, 403:20, 404:2, 404:3, 404:9, 404:11, 404:15 <b>contract's</b> 275:3 <b>contracts</b> 283:16, 335:9 <b>contractual</b> 377:13 <b>contradictory</b> 345:8 <b>contrary</b> 70:19 <b>conversation</b> 34:5, 127:12, 201:17, 276:17, 314:8, 350:16, 372:13 <b>conversations</b> 198:4, 198:6, 202:4, 314:19, 314:21, 314:22, 315:1, 331:7, 339:18, 351:18, 373:22, 380:6, 411:2, 412:19, 421:10	<b>convincing</b> 38:22 <b>cookies</b> 379:20, 379:22 <b>cooperate</b> 426:21 <b>cooperative</b> 320:22 <b>copied</b> 200:5, 200:6, 202:20, 323:8, 415:2, 420:3, 425:2 <b>copies</b> 55:3, 154:18, 263:10, 278:15, 322:20, 361:11 <b>cops</b> 39:1 <b>copy</b> 16:7, 36:12, 54:13, 73:2, 86:7, 90:16, 157:4, 163:15, 216:12, 216:15, 257:3, 271:21, 279:15, 280:3, 280:18, 293:6, 293:7, 322:1, 322:17, 322:18, 325:9, 332:3, 372:22, 384:10, 401:8, 403:15, 403:18 <b>copying</b> 339:8 <b>corect</b> 327:5 [REDACTED]	112:19, 134:11, 306:17, 307:10, 307:12, 307:15, 418:16, 423:15, 443:10 <b>corporation</b> 18:3, 401:4, 401:10 <b>corrected</b> 189:6 <b>corrections</b> 445:6 <b>correlation</b> 247:6 <b>correspondence</b> 159:9, 206:12, 414:19, 420:16, 429:10, 429:12 <b>correspondences</b> 366:7 <b>cost</b> 249:5, 249:6, 334:21, 334:22, 335:1, 336:8, 383:21, 397:21, 412:13 <b>costly</b> 39:7 <b>costs</b> 297:22, 298:2, 298:13, 393:9 <b>could</b> 34:6, 46:3, 89:9, 91:22, 95:17, 101:2, 115:10, 123:22, 124:1, 125:15, 137:9, 137:10, 137:13, 138:7, 153:1, 154:1, 154:3, 166:16, 170:7, 179:8, 179:9, 184:2, 185:21, 191:15, 191:16, 194:3, 196:6, 199:11, 199:13, 203:10, 206:13, 213:22,	220:13, 222:19, 238:9, 242:21, 253:10, 253:18, 268:20, 273:16, 289:8, 295:11, 299:8, 326:16, 352:10, 352:11, 367:9, 367:10, 368:4, 368:16, 368:17, 370:3, 370:5, 370:12, 370:13, 370:19, 370:20, 371:8, 371:13, 373:7, 404:4, 409:7, 412:10, 428:16, 439:16, 440:11, 440:13, 440:15, 443:2 <b>couldn't</b> 68:7, 121:22, 128:19, 177:8, 179:12, 222:2, 226:18, 227:14 <b>counsel</b> 9:16, 11:1, 12:19, 76:2, 155:9, 155:16, 155:21, 156:3, 158:15, 168:10, 200:21, 206:17, 207:16, 263:4, 286:16, 311:14, 312:3, 374:6, 412:8, 412:9, 412:10, 414:22, 415:1, 418:18, 420:7, 420:12, 423:20, 423:21, 424:2, 424:3, 425:12, 425:13, 426:13, 430:6, 430:19, 431:1, 433:12, 439:3, 446:9 <b>count</b> 46:4, 147:21 <b>counted</b> 183:21
---	---	--	---

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

129

<b>countenance</b>	127:7, 128:19, 131:6, 132:15,	<b>creatures</b>	<b>damage</b>
386:8, 387:5		222:9	404:18, 406:3,
<b>counterclaim</b>	133:20, 178:9,	<b>credit</b>	431:21, 438:15,
37:13, 250:16, 363:17, 374:4	182:14, 196:5, 210:14, 215:2,	327:20, 327:21, 328:12, 336:19	439:1, 439:13, 439:19, 441:2,
<b>counting</b>	215:4, 238:22, 239:2, 257:1,	<b>credited</b>	441:5, 441:15, 442:1
96:22	265:15, 269:6, 269:7, 269:9, 272:8, 272:10,	<b>crisis</b>	<b>damaged</b>
<b>country</b>	272:13, 273:6,	100:5, 100:7, 100:9	441:19, 442:1
39:11, 267:8, 335:3	284:15, 284:21, 285:5, 285:11, 287:2, 287:4, 289:7, 289:10,	<b>critical</b>	<b>damages</b>
<b>county</b>	290:16, 352:7, 384:16, 384:20,	354:9	390:7, 392:6, 392:19, 394:4,
306:8	396:12, 416:6, 435:12	<b>crr</b>	394:10, 395:3, 395:10, 396:4,
<b>couple</b>	<b>court's</b>	1:22, 446:2	430:14, 430:18,
50:20, 120:1, 156:11, 160:9, 199:9, 233:6, 382:3	384:10, 403:15	<b>culmination</b>	431:4, 431:5,
<b>course</b>	<b>courteous</b>	195:3	<b>current</b>
15:14, 49:4, 49:10, 57:5, 105:7, 105:17, 106:17, 119:22, 141:21, 166:12, 174:4, 174:12, 184:8, 189:22, 250:8, 252:10, 254:11, 256:18, 283:12, 292:11, 293:11, 296:8, 343:4, 361:13, 378:5, 416:14, 435:20, 437:10	320:22	18:16, 271:10, 291:21, 292:3, 302:5, 302:6, 303:14, 304:1, 304:16, 305:7, 332:18, 336:10, 338:2, 382:5	431:9, 433:8, 433:9, 437:22, 438:9, 438:11, 439:7, 441:11, 441:17, 443:5, 443:12, 443:15, 443:17
<b>court</b>	<b>covered</b>	<b>currently</b>	<b>damaging</b>
1:1, 9:8, 10:12, 18:17, 29:16, 34:2, 38:11, 58:17, 65:19, 67:14, 68:8, 68:12, 68:18, 84:18, 86:20, 87:1, 88:16, 89:8, 89:11, 90:1, 90:4, 90:15, 101:21, 101:22, 118:8, 121:19, 122:3, 122:13, 124:14, 125:22,	379:13, 383:15	93:19, 271:12, 271:13, 283:9, 291:8, 304:4, 305:5, 334:3, 336:9, 336:12, 336:22, 432:15	413:15
	<b>covers</b>	<b>custody</b>	<b>dance</b>
	13:12	15:10, 28:22, 29:10, 29:20, 34:16, 35:17, 37:16, 123:20, 129:8, 235:14	422:15
	<b>cpa</b>	<b>cut</b>	<b>dark</b>
	274:16, 281:17, 282:4, 282:6, 283:8, 283:9	117:12, 234:21	153:13
	<b>crash</b>	<b>cute</b>	<b>data</b>
	119:22	268:7	14:14, 14:16, 45:16, 45:18, 47:11, 54:20, 55:1, 55:12, 68:15, 72:19, 105:18, 110:4, 116:6, 171:18, 243:2, 245:11, 247:9, 248:19, 271:14, 272:11, 272:14, 273:11, 276:22, 277:1, 277:2, 288:11, 288:13, 288:20, 289:6, 289:19, 291:13, 299:15, 304:5, 352:14, 384:9, 397:20,
	<b>create</b>	276:22, 277:1, 277:2, 288:11, 288:13, 288:20, 289:6, 289:19, 291:13, 299:15, 304:5, 352:14, 384:9, 397:20,	
	54:20, 346:5	<b>cycle</b>	
	<b>created</b>	389:19	
	100:5, 100:7, 275:6, 384:6	<b>D</b>	
	<b>creates</b>		
	21:14	<b>dad</b>	
	<b>creating</b>	239:13	
	224:12, 224:18	<b>daily</b>	
		349:22	

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

130

404:12, 413:14, 437:8 <b>date</b> 9:11, 26:17, 56:19, 57:10, 57:12, 58:6, 69:16, 70:17, 70:22, 71:6, 76:22, 86:21, 102:18, 187:12, 214:6, 217:13, 217:17, 217:19, 217:20, 218:5, 218:8, 218:9, 219:4, 219:6, 219:7, 219:8, 220:4, 222:4, 223:5, 224:9, 224:13, 224:18, 224:21, 225:21, 226:2, 226:3, 226:5, 226:9, 226:10, 226:13, 227:15, 232:10, 233:11, 253:9, 258:2, 273:8, 309:3, 325:14, 347:22, 359:11, 359:17, 445:10 <b>dated</b> 5:20, 6:4, 6:9, 6:12, 6:14, 6:19, 7:12, 7:15, 7:17, 7:20, 8:3, 8:6, 8:9, 8:12, 8:15, 8:17, 8:21, 88:3, 88:4, 158:11, 163:11, 163:14, 286:12, 321:21, 348:8, 354:9, 372:1, 414:19, 420:21, 424:22 <b>dates</b> 14:20, 57:3, 69:10, 71:2, 87:2, 200:17,	201:6, 219:16, 313:13, 325:7, 326:9 <b>dave</b> 8:8, 8:12, 373:12 <b>david</b> 418:14 <b>day</b> 20:10, 58:22, 114:10, 116:18, 118:8, 141:16, 151:21, 165:4, 198:21, 213:14, 225:7, 230:9, 231:5, 262:21, 279:10, 291:13, 295:9, 341:22, 344:12, 349:11, 349:14, 356:10, 373:10, 386:21, 409:7, 409:8, 410:3, 427:10, 446:14 <b>day-to-day</b> 272:2, 272:21, 365:20 <b>days</b> 56:18, 57:10, 57:11, 58:6, 63:10, 63:11, 64:16, 80:11, 81:10, 83:16, 84:18, 84:20, 147:4, 174:15, 176:10, 176:12, 178:9, 192:2, 208:1, 219:11, 221:6, 223:8, 223:13, 226:2, 228:4, 228:22, 229:14, 230:1, 231:6, 231:21, 232:9, 233:11, 251:3, 251:14, 252:2, 252:21, 258:2, 347:8, 347:12, 347:13,	349:5, 350:1, 353:7, 354:11, 354:20, 369:2, 407:3 <b>deadline</b> 90:3 <b>deal</b> 40:22, 327:7 <b>dealing</b> 15:15, 229:18, 326:19 <b>debt</b> 231:20, 231:22 <b>debts</b> 257:22, 258:1 <b>december</b> 7:4, 7:6, 7:9, 103:10, 200:14, 287:16, 292:3, 324:19, 363:19, 366:3, 373:16, 388:1, 389:11 <b>decided</b> 121:5, 174:16, 275:10 <b>decision</b> 66:4, 127:14, 146:21, 186:11, 187:7, 187:9, 187:22, 188:4, 188:21, 189:3, 189:16, 249:1, 260:19, 261:1, 263:10, 265:22, 266:3, 276:17, 373:9 <b>decisions</b> 129:10, 212:8 <b>declaration</b> 136:2, 136:10, 136:19 <b>declared</b> 373:2 <b>decreasing</b> 189:9 <b>deduce</b> 247:17 <b>deducted</b> 98:22	<b>deed</b> 306:17, 307:15, 307:16, 381:19, 381:21 <b>deeds</b> 306:12, 306:15, 381:9, 381:15 <b>default</b> 383:22, 397:8, 397:13, 431:5, 434:12 <b>defect</b> 177:14, 177:16, 179:5 <b>defendant</b> 10:4 <b>defendants</b> 1:9, 3:11, 10:1, 10:6, 10:9, 10:11, 431:1 <b>defending</b> 111:19 <b>defense</b> 144:5 <b>defenses</b> 27:5 <b>deficiencies</b> 186:12, 263:19 <b>define</b> 239:20 <b>defining</b> 27:18, 194:16 <b>definitely</b> 323:4 <b>definition</b> 15:16, 17:20, 17:21, 18:5, 120:2, 226:13 <b>degree</b> 112:12 <b>delay</b> 66:5, 77:19 <b>delayed</b> 5:13 <b>delinquency</b> 258:2 <b>delinquent</b> 257:21
---	---	--	--

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

131

<b>deliver</b>	83:3, 89:22, 132:10, 135:9, 136:2, 136:18, 139:9, 140:5, 265:9, 339:10, 339:13, 343:15, 345:17, 345:22, 346:12, 347:11, 356:17, 386:13, 386:15, 387:21, 390:3, 390:5, 390:9, 390:12, 391:16, 404:19, 405:2, 405:3, 406:2, 406:4, 406:10, 406:19, 407:9, 407:15, 413:6, 425:18, 425:21, 427:21, 443:8	139:12, 222:20, 222:21, 225:19, 227:13, 227:17, 227:21, 235:19, 235:20, 255:5, 257:3, 265:20, 265:22, 266:3, 266:22, 267:10, 269:4, 269:5, 348:21	<b>dependency</b>	341:17, 342:21, 343:14, 355:17, 357:21, 359:15, 366:14, 367:3, 374:9, 375:5, 375:15, 386:7, 387:9, 388:9, 389:2, 393:6, 393:15, 395:15, 396:1, 396:9, 396:18, 398:5, 398:17, 404:7, 407:19, 419:11, 419:12, 422:21, 423:7, 423:8, 423:14, 432:9, 444:4, 446:3
<b>dependent</b>	213:13	<b>depends</b>	396:18, 398:5, 398:17, 404:7, 407:19, 419:11, 419:12, 422:21, 423:7, 423:8, 423:14, 432:9, 444:4, 446:3	
<b>depending</b>	58:14	<b>deposition</b>	442:7	
<b>demands</b>	96:19, 133:7, 195:21, 240:18	<b>depiction</b>	<b>derive</b>	
<b>demanding</b>	130:6, 130:17, 131:15, 131:18, 132:1, 132:10, 132:20, 132:22, 133:4, 133:7, 135:2, 135:10, 135:16, 135:17, 135:22, 136:6, 136:10, 136:17, 139:9, 139:14, 139:21, 140:22, 178:13, 178:16, 208:12, 208:14, 233:12, 243:19, 243:21, 244:7, 244:10, 244:15, 244:21, 245:3, 422:7, 422:9, 423:5	72:17, 124:15	154:22, 434:19	
<b>delivered</b>	290:21, 426:1	<b>deponent</b>	<b>derived</b>	
<b>delivering</b>	160:18, 363:4	<b>deportation</b>	309:10, 434:21	
<b>delivery</b>	5:16, 88:18, 387:15, 387:17,	<b>depos</b>	<b>deriving</b>	
<b>demand</b>	391:9, 391:18, 406:12	9:14, 10:13	205:7, 332:21	
<b>demanded</b>	442:6	<b>deposed</b>	<b>describe</b>	
<b>denied</b>	66:15, 76:18, 125:14, 125:17, 195:2, 206:8, 210:18, 316:6, 398:21	85:12	13:9	
<b>denominator</b>	65:17, 120:7	<b>deposition</b>	<b>described</b>	
<b>denies</b>	105:4, 108:7, 108:10, 108:19, 108:20, 111:7, 113:3	1:12, 2:1, 5:9, 5:10, 9:3, 9:14, 11:8, 12:6, 12:12, 31:13, 31:18, 39:16, 39:17, 41:6, 41:8, 41:22, 43:22, 45:12, 49:6, 55:22, 56:8, 74:21, 78:16, 88:22, 118:13, 134:6, 161:1, 164:5, 166:2, 207:6, 233:8, 258:17, 277:10, 277:17, 290:18, 291:1, 305:13, 340:7,	147:1, 356:11	
<b>department</b>	23:20, 33:21,	<b>detail</b>	<b>describing</b>	
		55:4, 158:2, 182:6, 287:11, 306:9, 379:11,	42:17	

CONTAINS CONFIDENTIAL PORTIONS  
12410

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

132

435:4 <b>details</b> 72:19, 78:10 <b>detain</b> 129:21 <b>detained</b> 128:8 <b>detention</b> 178:10, 235:14, 236:19, 238:3, 238:8 <b>determination</b> 64:2, 143:10, 183:5, 213:4 <b>determine</b> 52:19, 104:3, 105:8, 113:19, 155:6, 166:16, 212:4, 212:7, 230:20, 245:12, 264:19, 434:5, 439:1, 442:20 <b>determined</b> 121:5, 139:4, 431:11 <b>determining</b> 96:7 <b>device</b> 240:4, 240:19, 240:22, 241:1, 242:9, 242:13, 242:14, 243:1, 246:6, 333:5, 333:7, 333:22 <b>devices</b> 333:5, 333:18, 333:20, 336:17 <b>dhs</b> 28:21, 29:9, 42:21, 45:2, 46:14, 47:4, 48:22, 49:15, 50:22, 53:11, 91:5, 122:20, 123:17, 180:12, 182:17, 183:6, 192:2, 205:8, 205:10, 205:11,	205:17, 213:2, 229:11, 232:9, 233:10, 234:4, 252:19, 355:2 <b>dhs's</b> 174:16, 177:4, 180:4, 188:6, 192:14 <b>dictated</b> 235:19 <b>difference</b> 40:7, 49:19, 101:10, 239:3, 247:18, 247:19, 264:16, 269:18, 397:14, 437:3, 437:14 <b>different</b> 13:14, 21:7, 37:9, 40:3, 42:2, 50:12, 101:2, 101:4, 101:8, 113:13, 148:19, 182:4, 194:8, 195:22, 196:7, 196:11, 210:21, 216:22, 217:1, 217:2, 224:12, 224:19, 240:17, 243:9, 253:5, 277:9, 285:15, 286:5, 288:5, 311:20, 313:13, 331:5, 351:10, 360:21, 386:11, 386:17, 386:18, 387:6, 387:8, 401:17, 429:18, 430:3 <b>differs</b> 151:13 <b>difficult</b> 179:14, 179:15, 392:1, 435:9, 439:13, 441:7 <b>dig</b> 49:8 <b>digging</b> 49:13	<b>digital</b> 332:3 <b>diligently</b> 329:19 <b>dimandri</b> 306:21 <b>dineen</b> 4:17, 9:13 <b>direct</b> 11:1, 118:6, 125:11, 168:5, 179:22, 267:22, 365:12, 424:1, 424:3, 442:20 <b>directed</b> 368:22 <b>direction</b> 446:8 <b>directive</b> 38:5 <b>directly</b> 194:2, 203:4 <b>disagree</b> 19:13, 138:12, 162:2 <b>disc</b> 9:3 <b>discharge</b> 26:14, 26:22, 27:19, 27:21, 28:1, 28:14, 29:1, 29:2, 29:6, 29:8, 143:13, 143:15, 172:5, 343:15 <b>discharged</b> 171:22, 172:13, 173:12 <b>disclose</b> 156:5, 314:7, 384:15 <b>disclosing</b> 155:22, 402:3, 420:6 <b>disclosure</b> 384:13, 401:14, 402:10, 402:20 <b>disclosures</b> 252:8, 392:1,	394:14, 395:21, 401:16, 401:19, 437:7, 437:8 <b>disconnect</b> 369:6 <b>discover</b> 260:13 <b>discovered</b> 248:11 <b>discovery</b> 159:10, 164:2, 164:8, 164:10, 164:14, 165:9, 167:3, 170:22, 215:10, 392:14 <b>discrepancy</b> 52:14 <b>discuss</b> 24:3, 257:12, 317:20, 317:22, 331:18, 425:15 <b>discussed</b> 12:5, 207:16, 253:1, 315:21, 359:19 <b>discussing</b> 274:5 <b>discussion</b> 112:22, 426:6 <b>discussions</b> 380:21 <b>disenfranchised</b> 308:9 <b>disingenuous</b> 290:15 <b>disk</b> 13:16 <b>dismissed</b> 70:16, 71:5, 71:12, 71:13, 71:15, 78:6 <b>dismisses</b> 65:22 <b>dispatch</b> 256:14 <b>disposition</b> 93:5, 93:14, 93:17, 93:20,
--	---	---	---

CONTAINS CONFIDENTIAL PORTIONS

12411

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

133

94:10, 94:12, 105:15, 105:16, 116:5 <b>disputable</b> 323:12 <b>dispute</b> 48:8, 48:15, 68:14, 86:15, 87:4, 87:21, 89:7, 90:20, 91:7, 91:11, 92:19, 164:8, 164:10, 172:3, 172:14, 172:16, 173:13, 175:14, 175:16, 176:1, 176:2, 176:4, 177:15, 177:17, 177:19, 177:20, 177:22, 178:1, 178:2, 178:4, 179:1, 179:7, 180:3, 194:11, 194:16, 196:13, 196:15, 197:2, 197:9, 197:11, 197:20, 203:2, 203:15, 205:14, 205:20, 206:1, 206:4, 206:14, 206:21, 207:19, 311:18, 313:21, 314:18, 316:2, 316:4, 316:6, 316:11, 316:16, 317:16, 324:16, 383:19, 397:22, 437:6 <b>dispute's</b> 194:8, 208:16 <b>disputed</b> 333:3, 333:8, 333:11 <b>disputes</b> 174:7, 174:17, 175:3, 175:7, 175:17, 175:18, 195:17, 195:18,	196:18, 196:20, 196:22, 197:6, 197:17, 198:10, 199:6, 200:22, 201:8, 204:13, 205:4, 205:12, 205:18, 209:12, 209:15, 231:19, 232:8, 233:7, 311:11, 312:10, 312:16, 318:12, 319:3, 394:1 <b>disputing</b> 231:20 <b>distinction</b> 101:10, 174:13, 174:18, 174:19, 253:22 <b>distinguish</b> 88:13 <b>distracted</b> 237:15, 237:17 <b>district</b> 1:1, 1:2, 9:8, 65:19, 225:13, 384:4 <b>division</b> 1:3, 9:9 <b>division's</b> 331:5 <b>docket</b> 128:8 <b>document</b> 12:2, 15:19, 48:12, 48:13, 56:13, 68:17, 87:1, 87:7, 138:6, 212:16, 219:13, 224:20, 252:19, 252:20, 255:8, 259:11, 284:12, 284:13, 284:19, 286:11, 286:17, 287:3, 292:5, 292:7, 292:9, 294:6, 294:15, 294:16, 299:21, 309:16,	309:18, 323:20, 325:6, 329:6, 345:15, 364:5, 392:7, 393:17, 403:17, 411:16, 424:21, 425:1, 425:9, 425:21, 438:17, 439:15, 440:8, 442:18 <b>document's</b> 421:5 <b>documentation</b> 49:7, 50:3, 54:15, 76:6, 99:3, 159:15, 201:9, 206:3, 211:18, 216:2, 313:20, 316:1, 316:15, 316:22, 319:2, 324:1, 324:5, 379:5, 379:8, 394:2 <b>documented</b> 244:10 <b>documents</b> 12:15, 12:18, 12:20, 13:5, 13:9, 14:2, 43:14, 72:22, 73:8, 73:9, 93:3, 155:13, 155:14, 161:6, 165:10, 165:16, 195:11, 195:15, 195:20, 195:22, 196:1, 196:3, 207:15, 230:15, 230:18, 230:19, 231:3, 233:17, 259:8, 263:7, 269:11, 272:7, 290:17, 290:18, 290:20, 291:16, 295:13, 303:8, 311:13, 314:12, 314:15, 314:16, 314:18, 338:6, 340:13, 351:18,	352:12, 360:10, 361:12, 362:2, 362:17, 393:12, 394:6, 395:6, 397:3, 397:5, 399:3, 402:4, 402:20, 409:19, 410:16, 412:1, 423:16, 430:7, 435:22, 439:10, 439:14, 440:22, 442:15, 443:11 <b>dog</b> 222:11, 222:13, 237:16 <b>doghouse</b> 322:18 <b>doing</b> 16:9, 37:11, 58:13, 74:16, 98:14, 103:9, 108:2, 108:6, 114:16, 151:6, 183:16, 242:8, 273:3, 276:5, 281:19, 282:4, 283:17, 298:17, 342:19, 354:13, 361:5, 397:16, 419:3, 437:13 <b>dollar</b> 23:10, 23:14, 82:16, 82:17, 96:16, 96:17, 96:18, 96:22, 279:4, 280:9, 280:16, 281:1, 281:3, 281:10, 306:2, 406:6, 407:14 <b>dollars</b> 97:3, 97:8, 97:9, 97:10, 98:2, 98:3, 98:6, 99:11, 119:16, 119:17, 217:1, 390:16, 392:5, 412:12,
---	--	---	---

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

134

436:11, 438:8 <b>donald</b> 18:15, 230:3 <b>done</b> 17:18, 38:13, 39:3, 41:6, 41:13, 51:15, 65:1, 81:13, 85:21, 97:18, 114:1, 122:16, 175:13, 193:21, 194:1, 234:20, 234:21, 252:15, 262:21, 263:2, 276:13, 278:15, 279:16, 280:2, 283:7, 289:22, 290:2, 290:17, 290:19, 291:4, 295:21, 296:18, 301:19, 303:6, 395:8, 397:17, 402:7, 402:8, 435:4, 441:5, 442:9, 442:10 <b>donne</b> 3:12, 8:16, 8:18, 8:20, 10:9, 420:1, 421:2, 429:8 <b>donne's</b> 428:8 <b>donne-peters</b> 10:10 <b>donovan's</b> 31:4, 126:4, 164:12, 220:10 <b>door</b> 133:15, 302:21 <b>double</b> 83:14 <b>double-check</b> 263:20 <b>down</b> 75:20, 80:10, 147:17, 150:22, 258:17, 267:17, 301:17, 328:18,	372:6, 434:4, 436:7 <b>dozens</b> 125:17, 227:6 <b>draft</b> 364:5, 365:14, 412:17, 424:3 <b>drafted</b> 364:6, 365:14 <b>driving</b> 417:20 <b>due</b> 5:13, 5:15, 20:10, 20:11, 50:8, 56:14, 65:6, 66:17, 71:6, 79:20, 87:6, 142:2, 212:12, 213:7, 213:19, 214:6, 214:7, 217:6, 217:7, 217:11, 217:13, 217:17, 217:19, 217:20, 218:5, 218:8, 218:9, 218:14, 218:15, 219:7, 219:10, 219:11, 219:19, 220:4, 220:18, 220:21, 221:10, 221:17, 222:4, 223:17, 224:8, 224:9, 224:12, 224:18, 225:10, 225:15, 225:18, 225:20, 226:2, 226:3, 226:5, 226:13, 227:15, 232:1, 233:10, 253:9, 255:1, 288:3, 325:10, 345:4, 358:1, 374:20, 376:12, 376:13, 390:4 <b>duly</b> 10:17 <b>during</b> 12:5, 55:21,	56:8, 68:1, 150:14, 213:13, 235:14, 240:7, 355:2, 355:14, 374:8, 401:17, 431:3 <b>duties</b> 124:21 <b>duty</b> 213:20, 422:6, 423:4	<b>eclipses</b> 213:5 <b>edification</b> 138:17 <b>edify</b> 221:13 <b>effect</b> 37:14 <b>efforts</b> 122:21 <b>eight</b> 245:7, 245:18, 245:19, 245:21, 246:3, 246:5 <b>eight-month</b> 248:16 <b>either</b> 22:14, 74:1, 92:19, 92:22, 126:16, 143:12, 144:18, 151:18, 155:16, 192:16, 192:17, 206:1, 213:20, 226:22, 236:5, 238:18, 238:21, 252:18, 302:17, 336:18, 368:16, 368:22, 370:3, 370:4, 372:14, 373:20, 383:20, 386:16, 387:19 <b>elect</b> 367:9 <b>elected</b> 38:19, 368:19 <b>election</b> 18:14 <b>electronic</b> 16:7, 54:22, 55:12 <b>electronically</b> 15:21, 103:3 <b>element</b> 133:6, 183:2, 183:3, 187:18, 188:9, 344:17 <b>elements</b> 120:15, 386:10,
--	--	--	--

CONTAINS CONFIDENTIAL PORTIONS  
12413

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

135

393:9, 439:18 <b>elevate</b> 120:9 <b>elevated</b> 365:11, 384:6, 391:19 <b>else</b> 107:20, 107:21, 113:17, 264:22, 351:2, 371:6, 387:3, 433:7 <b>email</b> 5:18, 6:3, 6:7, 6:10, 6:13, 6:16, 7:11, 7:14, 7:19, 8:5, 8:8, 8:11, 8:20, 103:13, 138:12, 156:20, 157:6, 158:10, 158:18, 200:22, 203:5, 203:16, 203:19, 207:16, 215:12, 311:16, 311:17, 313:12, 315:10, 315:15, 317:4, 317:5, 319:22, 321:7, 321:21, 322:6, 323:6, 323:8, 323:18, 325:4, 326:1, 326:18, 327:8, 341:1, 341:13, 341:17, 341:18, 341:20, 342:2, 343:22, 348:8, 348:11, 348:12, 348:14, 348:17, 349:16, 350:4, 359:1, 359:3, 359:4, 360:7, 361:2, 366:3, 372:1, 375:5, 376:5, 376:8, 377:6, 377:7, 378:17, 388:1, 397:20, 418:14, 418:19, 427:15,	428:7, 428:22, 429:3 <b>emailed</b> 263:15 <b>emails</b> 162:3, 195:10, 195:13, 199:9, 199:13, 199:18, 200:1, 200:4, 200:5, 201:2, 201:21, 202:5, 202:7, 202:8, 202:12, 202:15, 203:11, 204:10, 204:11, 207:15, 211:14, 211:16, 311:19, 311:21, 312:1, 312:7, 312:9, 312:13, 312:20, 312:22, 313:6, 313:7, 313:8, 313:17, 313:18, 317:9, 320:4, 321:10, 349:3, 354:20 <b>employed</b> 446:10 <b>employee</b> 207:8, 419:1 <b>employees</b> 335:2 <b>empower</b> 402:12 <b>enables</b> 113:22 <b>encumbered</b> 305:21, 306:11, 307:7, 307:18 <b>end</b> 25:22, 33:11, 116:18, 141:16, 198:21, 239:11, 239:14, 262:21, 264:11, 272:15, 305:13, 347:11, 375:9, 375:12, 406:7, 407:18, 415:4, 423:7,	432:9 <b>endeavor</b> 68:4 <b>ended</b> 248:14, 435:11 <b>ends</b> 444:4 <b>enforcement</b> 34:3 <b>engage</b> 316:4, 389:1, 412:7 <b>engaged</b> 274:16, 285:15 <b>engages</b> 120:4, 441:16 <b>engaging</b> 418:22 <b>english</b> 142:8 <b>enough</b> 38:3, 234:15, 257:10, 310:11, 325:1, 427:6 <b>ensure</b> 59:8, 86:11, 236:3, 238:18, 240:22, 288:14, 289:8, 331:3, 407:4, 407:6 <b>entendre</b> 83:14 <b>enter</b> 227:19, 341:7 <b>entered</b> 229:10, 272:14 <b>entering</b> 272:11, 273:11 <b>entire</b> 14:18, 14:19, 284:9 <b>entirely</b> 102:10, 209:4, 321:13 <b>entitled</b> 318:9, 345:22, 408:3, 408:7 <b>entitles</b> 407:21	<b>enunciated</b> 112:20 <b>eoir</b> 268:16, 269:3, 269:5, 269:6 <b>equal</b> 94:10 <b>equipment</b> 299:1 <b>equity</b> 305:20, 307:12, 307:14, 432:22 <b>era</b> 230:3 <b>erik</b> 55:21, 156:22, 211:17, 314:3, 314:21 <b>err</b> 59:7, 228:8 <b>errata</b> 445:7 <b>erroneous</b> 58:17, 68:8, 81:11, 111:6, 114:8, 161:20 <b>error</b> 66:21, 101:20, 122:13, 178:3, 178:5, 178:6 <b>escalated</b> 354:20 <b>eschneider@nexus-</b> <b>helps</b> 5:19, 6:18 <b>escort</b> 40:10, 41:10, 41:15 <b>escorted</b> 42:20 <b>escrow</b> 381:12, 383:4 <b>especially</b> 40:14, 95:3 <b>esquire</b> 3:3, 3:4, 3:12, 4:3, 4:9 <b>establish</b> 74:17, 74:18,
---	--	--	--

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

136

240:21 <b>establishing</b> 410:14 <b>estate</b> 305:15, 305:17, 305:20, 305:21, 306:1, 306:11, 307:6, 335:16, 432:21 <b>estimate</b> 171:5, 226:11, 226:15, 228:20, 310:10, 310:16, 310:18, 432:13, 434:16, 438:16, 438:21 <b>estimated</b> 436:6, 440:19 <b>estimation</b> 226:18 <b>et</b> 1:8, 9:7, 235:18 <b>even</b> 25:9, 27:10, 45:7, 52:11, 65:12, 94:18, 95:3, 100:7, 101:15, 122:19, 137:1, 178:11, 199:19, 220:11, 222:13, 227:5, 227:14, 231:5, 272:19, 276:12, 277:10, 278:1, 278:2, 278:11, 278:12, 279:3, 322:20, 349:8, 357:17, 367:12, 392:13, 426:13, 432:3 <b>eventually</b> 123:12 <b>ever</b> 108:8, 176:4, 205:1, 239:22, 253:16, 295:22, 296:4	<b>ever-increasing</b> 407:3 <b>evergreen</b> 388:2, 389:2 <b>every</b> 20:12, 21:22, 33:7, 34:8, 35:15, 61:13, 66:13, 78:21, 82:11, 102:16, 105:21, 106:20, 109:20, 125:17, 214:2, 214:5, 223:3, 239:17, 240:14, 250:8, 252:13, 291:13, 295:9, 308:11, 316:19, 319:22, 355:19, 385:9, 385:16, 399:12, 409:8, 412:20, 412:22 <b>everybody</b> 105:18, 109:22, 113:17 <b>everyone</b> 105:19 <b>everything</b> 13:2, 97:19, 118:10, 124:18, 131:3, 273:3, 294:20, 331:12, 347:13, 349:19, 350:1, 355:19, 355:21, 391:20, 436:1 <b>evidence</b> 68:1, 87:3, 106:9, 165:16, 207:1, 325:11, 360:9, 374:14, 376:4, 379:2 <b>evidenced</b> 251:1 <b>evidences</b> 206:4 <b>evidencing</b> 361:12	<b>exacerbated</b> 18:17, 106:15 <b>exact</b> 16:4, 44:4, 200:13, 279:4, 279:22, 280:9, 280:16, 281:1, 281:3, 281:9, 336:1, 382:9 <b>exactly</b> 67:17, 110:11, 141:21, 142:16, 268:6, 270:17, 297:3, 304:20, 305:2, 308:21, 326:18, 328:9, 364:14, 378:9, 382:13, 389:7, 417:14, 422:8, 422:9, 435:19, 438:14, 442:9, 442:10 <b>examination</b> 5:2, 11:1, 51:3, 431:1, 431:4, 433:12 <b>examined</b> 10:19, 445:3 <b>examining</b> 339:7 <b>example</b> 27:14, 29:19, 37:3, 37:4, 38:10, 100:21, 120:6, 128:5, 128:6, 178:7, 203:12, 215:7, 266:17, 277:5, 288:15, 297:5, 297:18, 298:1, 313:3, 315:7, 327:6, 329:5, 329:7, 345:20, 366:6, 402:10 <b>except</b> 323:20, 366:1 <b>excited</b> 295:22, 330:3,	330:4 <b>exciting</b> 11:11, 335:17 <b>excluding</b> 391:3 <b>excuse</b> 84:19, 197:18, 286:16, 346:18 <b>execute</b> 426:11 <b>executed</b> 401:4, 401:9, 404:15, 420:18 <b>executing</b> 39:4, 310:2 <b>execution</b> 426:15 <b>exercise</b> 396:18, 396:20 <b>exercised</b> 387:18 <b>exhausted</b> 21:21, 60:13, 63:1, 63:6, 144:10 <b>exhibit</b> 5:10, 5:12, 5:14, 5:16, 5:18, 6:3, 6:7, 6:10, 6:13, 6:16, 6:21, 7:3, 7:5, 7:8, 7:11, 7:14, 7:17, 7:19, 8:3, 8:5, 8:8, 8:11, 8:15, 8:17, 8:20, 11:13, 11:14, 11:20, 67:11, 67:13, 67:15, 82:3, 85:3, 88:7, 88:17, 88:21, 89:1, 131:12, 138:3, 146:14, 156:16, 156:17, 158:8, 163:10, 163:11, 163:12, 216:10, 256:20, 257:2,
--	---	--	--

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

137

286:7, 294:1, 294:4, 297:12, 315:16, 315:18, 322:11, 323:2, 339:2, 341:10, 343:11, 348:6, 371:21, 374:4, 400:21, 400:22, 414:17, 419:22, 420:7, 425:4, 427:7 <b>exhibits</b> 5:9 <b>exist</b> 16:13, 17:5, 181:7, 181:17, 244:1 <b>existed</b> 200:8, 391:21 <b>existence</b> 21:14 <b>exonerate</b> 213:21, 438:4 <b>exonerated</b> 16:16 <b>exoneration</b> 24:6, 117:3, 250:6 <b>expansive</b> 141:12 <b>expect</b> 209:7, 282:20, 354:21, 443:2 <b>expectations</b> 150:19, 182:5 <b>expected</b> 354:12, 354:22, 426:21 <b>expecting</b> 23:12, 23:13 <b>expenses</b> 288:17 <b>expensive</b> 335:6 <b>experience</b> 275:17 <b>experienced</b> 438:3	<b>experiences</b> 247:17 <b>expert</b> 24:6, 138:13 <b>expire</b> 330:18 <b>expires</b> 446:16 <b>explain</b> 24:20, 52:13, 89:10, 112:1, 134:16, 170:9, 269:15, 270:6, 308:20 <b>explained</b> 80:13, 125:12, 203:1, 289:7, 290:13 <b>explaining</b> 299:6, 311:18 <b>explains</b> 218:2 <b>explanation</b> 89:12, 160:21, 203:9, 216:4, 217:21, 373:2 <b>explore</b> 318:9 <b>expose</b> 413:7 <b>exposure</b> 18:22, 19:9, 20:2, 20:3, 20:6, 346:2, 346:4 <b>express</b> 328:3, 328:4, 328:13 <b>expresses</b> 340:5 <b>expressly</b> 345:22, 368:2 <b>extended</b> 246:6 <b>extending</b> 31:18 <b>extension</b> 283:4	<b>extensive</b> 214:17, 400:9, 438:10, 441:17 <b>extensively</b> 288:9, 359:19 <b>extent</b> 197:22, 210:19, 300:4, 306:10, 366:10, 406:16 <b>extracted</b> 54:20 <b>extrapolate</b> 283:13 <b>extrapolated</b> 288:16, 288:17 <b>extrapolation</b> 229:17 <b>extremely</b> 201:11	327:13, 335:1, 344:12, 349:3, 359:20, 360:10, 371:3, 371:11, 371:16, 373:15, 389:1, 392:6, 392:10, 392:18, 400:15, 405:16, 413:19, 420:14, 441:4 <b>factor</b> 146:8, 249:5, 249:6, 249:8, 249:10 <b>facts</b> 68:5, 77:9, 87:4, 89:7, 90:20, 120:11, 134:6, 199:7, 201:14, 201:22, 202:9, 202:18, 203:14, 204:11, 278:7, 278:21, 313:21, 316:9, 317:15, 319:4, 319:10, 320:15, 321:5, 324:22, 326:14, 326:15, 327:8, 327:12, 383:12, 396:3, 422:2, 422:20, 422:22, 423:1, 423:2, 423:11 <b>fail</b> 14:1, 17:14, 18:10, 52:20, 94:22, 96:18, 97:2, 97:4, 98:13, 99:12, 99:19, 99:20, 104:15, 104:16, 104:17, 104:19, 104:22, 105:8, 106:10, 107:3, 108:1, 108:3, 108:6, 109:2, 109:3, 109:5, 109:9, 109:10,
<b>F</b>			

CONTAINS CONFIDENTIAL PORTIONS

12416

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

138

109:16, 109:18, 110:2, 110:7, 110:12, 110:14, 110:15, 113:14, 116:15, 116:16, 119:13, 121:10, 121:15, 194:17, 252:11, 316:7, 393:18, 393:19, 393:20, 393:21 <b>failed</b> 19:22, 312:16, 383:14, 438:4 <b>failure</b> 5:15, 87:5, 94:22, 95:19, 95:21, 96:1, 96:2, 96:4, 106:6, 107:16, 111:5, 111:15, 114:11, 114:13, 115:5, 115:7, 115:16, 120:5, 135:22, 136:9, 136:17, 139:14, 139:20, 140:9, 140:10, 142:13, 142:17, 180:4, 180:13, 180:17, 181:20, 181:22, 182:17, 188:6, 218:18, 218:22, 221:1, 222:18, 393:1, 394:11 <b>fair</b> 209:10, 259:16 <b>faith</b> 80:22, 99:22, 106:13, 119:20, 119:21, 120:3, 120:6, 120:10, 120:13, 120:15, 120:16, 121:5, 169:7, 169:8, 318:7, 318:8, 318:17, 318:19, 319:12, 327:2, 327:7, 327:16,	369:3, 383:14, 385:2, 385:17, 386:11, 387:2, 387:7, 390:10, 391:6, 393:2, 394:12, 431:5, 431:15 <b>false</b> 74:17, 169:12, 321:14 <b>familiar</b> 12:1, 12:6, 173:16, 180:2 <b>families</b> 254:9 <b>family</b> 38:12, 39:12, 39:13, 238:9, 238:11, 238:13, 238:17, 238:19 <b>fan</b> 241:16, 241:21 <b>far</b> 24:22, 157:20, 186:1, 197:17, 240:16 <b>faster</b> 81:16, 82:10, 84:1 <b>fault</b> 178:14, 392:4 <b>faulty</b> 209:22 <b>favor</b> 17:19, 60:4, 63:3 <b>favorable</b> 106:11 <b>favorably</b> 109:13 <b>fcs</b> 110:2, 335:10, 381:14, 382:7, 388:5, 389:12, 389:18, 389:21, 389:22 <b>feature</b> 177:13	<b>february</b> 50:2, 55:22, 73:3, 91:15, 154:10, 156:13, 248:9, 329:7, 355:3, 368:21, 370:4, 370:11, 373:2, 373:9, 373:17, 373:21 <b>federal</b> 72:20, 189:6, 225:12, 229:7, 257:7, 324:15 <b>fee</b> 76:1, 187:1, 434:9, 435:7 <b>feel</b> 222:14, 235:3, 257:18, 413:10 <b>feeling</b> 26:9 <b>feels</b> 339:21 <b>fees</b> 143:3, 193:8, 390:16, 391:4, 405:10, 405:11, 407:21, 408:3, 408:7, 409:2, 431:17, 434:3, 434:17 <b>felt</b> 101:2, 400:7 <b>few</b> 44:9, 55:16, 169:2, 191:15, 194:20, 393:13, 395:6, 398:3, 401:16 <b>field</b> 227:7 <b>fight</b> 431:17, 434:3 <b>figure</b> 18:12, 18:14, 88:10, 91:7, 92:19, 108:11, 113:4, 114:1,	126:17, 173:13, 190:12, 247:22, 262:1, 353:18, 434:5, 434:19 <b>figured</b> 364:15 <b>figures</b> 185:17 <b>file</b> 63:9, 63:15, 64:15, 64:16, 64:18, 68:8, 69:20, 74:20, 100:18, 175:21, 175:22, 177:19, 182:10, 205:11, 206:14, 256:8, 265:15, 289:20, 290:4, 295:7, 297:5, 300:16, 324:16, 405:16 <b>filed</b> 64:17, 67:20, 69:8, 69:19, 74:2, 75:15, 76:1, 76:3, 90:15, 116:18, 183:1, 183:2, 183:10, 185:12, 185:15, 185:18, 185:19, 187:5, 187:9, 193:20, 194:2, 262:8, 262:12, 287:4 <b>files</b> 54:20, 183:17 <b>filings</b> 143:3, 176:13, 187:1, 193:8, 193:22, 204:4, 205:14, 205:18, 276:5 <b>final</b> 35:14, 47:22, 50:16, 59:18, 59:20, 59:21,
--	---	---	---

CONTAINS CONFIDENTIAL PORTIONS  
12417

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

139

60:2, 60:9, 60:11, 60:12, 60:16, 60:18, 60:21, 61:1, 61:5, 61:16, 61:17, 62:16, 62:17, 62:18, 62:21, 63:3, 63:22, 64:1, 64:2, 65:5, 65:7, 65:9, 71:13, 138:14, 142:1, 143:10, 147:7, 213:4, 221:17, 359:10 <b>finalizing</b> 278:3, 279:14 <b>finance</b> 327:21 <b>finances</b> 272:9, 273:8 <b>financial</b> 271:11, 271:14, 272:11, 272:14, 274:13, 276:4, 278:3, 278:15, 279:11, 279:14, 280:1, 280:8, 280:17, 281:1, 281:20, 282:6, 282:7, 282:10, 282:15, 283:20, 284:1, 287:18, 288:22, 289:5, 289:9, 290:20, 291:9, 295:6, 295:14, 296:5, 296:12, 296:16, 296:22, 297:4, 298:16, 299:12, 299:15, 300:11, 301:8, 303:3, 304:5, 305:3, 308:14, 309:1, 340:13, 390:21, 392:22, 404:18, 406:2, 406:19, 407:9, 417:12,	417:15, 418:8, 439:6, 446:11 <b>financially</b> 274:18, 277:15, 308:19 <b>financials</b> 273:5, 275:11, 275:15, 275:21, 276:7, 276:16, 282:2, 282:12, 287:10, 327:19 <b>find</b> 15:16, 41:8, 44:11, 46:21, 53:8, 53:22, 55:5, 65:11, 65:13, 77:4, 150:12, 182:20, 234:11, 247:22, 248:3, 308:22, 334:1, 343:1, 355:18, 356:19, 367:11, 368:17, 368:19, 368:22, 370:4, 370:7, 372:18, 386:16, 387:19 <b>finding</b> 371:6, 373:12 <b>fine</b> 11:19, 20:16, 30:8, 31:10, 45:6, 46:7, 111:22, 167:21, 170:9, 181:13, 191:17, 241:10, 349:20 <b>finish</b> 35:8, 75:18, 117:20, 118:1, 118:5, 118:19, 119:10, 119:11, 143:20, 170:3, 223:21, 383:9, 393:6, 393:15, 395:15, 398:4, 398:16, 409:6 <b>finished</b> 147:9, 303:5	<b>finishes</b> 22:15 <b>firm</b> 73:11, 77:4, 207:11 <b>first</b> 10:17, 14:11, 68:22, 69:2, 69:12, 102:10, 114:13, 121:7, 130:5, 140:7, 141:8, 145:3, 145:12, 175:10, 176:3, 176:10, 185:10, 218:21, 219:21, 220:17, 220:20, 237:20, 249:12, 250:3, 257:19, 272:22, 288:19, 341:20, 342:13, 344:4, 382:2, 425:22, 429:22 <b>fiscal</b> 257:22 <b>fitted</b> 240:3, 240:15, 242:5 <b>fitzgerald</b> 2:5, 3:5 <b>five</b> 66:2, 78:5, 122:6, 184:16, 184:18, 231:6, 256:14, 260:21, 262:18, 263:8, 263:22, 313:7, 313:8, 334:16 <b>fix</b> 125:11, 179:17 <b>fixed</b> 67:1, 189:11, 348:3 <b>fixing</b> 301:19 <b>flag</b> 44:8, 90:17 <b>flavor</b> 438:6	<b>flip</b> 77:21 <b>florida</b> 37:3, 37:4, 37:5, 37:7 <b>flow</b> 327:22, 328:1, 328:2, 328:6 <b>flying</b> 91:18 <b>focus</b> 224:15, 227:9, 228:15, 236:10, 236:11, 413:20 <b>focusing</b> 281:22 <b>folks</b> 227:3, 248:1, 329:17 <b>follow</b> 219:4 <b>follow-up</b> 202:4, 341:18 <b>followed</b> 340:22 <b>following</b> 132:14, 159:13, 220:3 <b>follows</b> 10:19, 145:11 <b>foolish</b> 133:22 <b>force</b> 290:16 <b>forced</b> 265:8, 299:14 <b>forecast</b> 18:19 <b>forecasting</b> 18:20 <b>foreclosed</b> 198:14 <b>foregoing</b> 445:4, 446:3, 446:4 <b>forewarning</b> 51:10 <b>forfeit</b> 239:1
--	--	---	--

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

140

<b>forfeited</b>	311:14	102:3, 161:6,	239:4
137:1, 146:19,	<b>forwarding</b>	163:11, 164:20,	<b>funny</b>
239:5	158:12, 414:19	166:22, 208:18,	220:15, 358:11,
<b>forfeiture</b>	<b>found</b>	225:22, 255:8,	358:15
136:20	152:10, 323:11,	259:9, 262:4,	<b>further</b>
<b>forged</b>	356:22, 357:1,	329:6, 364:9,	19:18, 20:20,
68:17	357:6, 357:10,	392:7, 397:20,	28:4, 29:22,
<b>forget</b>	369:1, 386:18,	399:3, 420:21,	30:3, 30:6,
103:22, 256:13	405:20	421:1, 421:5,	30:16, 32:14,
<b>forgive</b>	<b>four</b>	422:13, 439:15	32:21, 34:21,
365:14	61:12, 66:2,	<b>fruition</b>	35:19, 37:17,
<b>forgot</b>	70:21, 76:2,	21:20	60:1, 66:4,
432:1	77:11, 78:5,	<b>frustrating</b>	116:1, 148:22,
<b>form</b>	122:5, 164:20,	72:18, 152:12,	157:19, 157:21,
19:6, 20:18,	166:22, 167:6,	275:17, 301:14	252:7, 268:2,
32:1, 35:18,	167:9, 167:15,	<b>fsc</b>	276:12, 296:10,
138:6, 138:18,	168:17, 170:1,	110:5, 389:15	298:11, 320:4,
146:11, 146:17,	263:17, 323:5	<b>fulfill</b>	339:10, 339:13,
147:3, 217:3,	<b>fourth</b>	29:15, 29:17,	351:13, 367:21,
217:4, 217:5,	113:22	227:10	372:11, 425:17,
234:9, 439:18	<b>frame</b>	<b>full</b>	430:11, 430:15,
<b>formal</b>	200:7, 200:8,	108:7, 118:17,	433:11, 443:22,
45:3, 46:14,	282:17, 287:16,	122:9, 146:21,	444:4
47:4, 91:5	355:2	169:6, 171:17,	<b>fusion</b>
<b>formally</b>	<b>frankly</b>	199:4, 229:15,	274:16, 281:17,
201:1	357:21	232:1, 237:3,	282:3, 282:6,
<b>former</b>	<b>freaked</b>	237:4, 238:14,	283:8, 283:9
419:1, 419:2	366:21	264:15, 296:17,	<b>future</b>
<b>forms</b>	<b>free</b>	300:6, 300:9,	19:18, 21:12,
160:4, 168:19,	433:5	300:10, 313:3,	104:13, 116:12,
169:18, 170:11,	<b>freely</b>	313:5, 347:11,	118:6, 368:18,
171:2, 171:6,	168:12	384:8, 433:5	368:20
286:5	<b>frequently</b>	<b>fully</b>	<hr/> <b>G</b>
<b>forth</b>	43:2, 43:5	146:3, 203:19,	<b>ga</b>
87:4, 89:7,	<b>friday</b>	206:18, 264:9,	3:16
90:20, 135:18,	160:12, 215:8,	288:21, 289:2,	<b>gaap</b>
144:1, 202:15,	341:15, 341:18,	291:14, 298:14,	275:1, 275:13,
203:13, 204:11,	341:21, 342:3,	298:15, 303:2,	276:7, 276:8,
233:12, 256:3,	342:4, 386:21,	303:5, 306:5,	281:22, 282:9,
291:10, 298:1,	392:12	349:2	283:19
362:14, 366:7,	<b>friend</b>	<b>function</b>	<b>gang</b>
429:12	97:12, 383:4	38:16, 41:21,	39:14
<b>forward</b>	<b>front</b>	207:12, 213:8,	<b>gather</b>
161:2, 174:21,	20:12, 35:13,	243:13	185:13, 411:7
312:2, 312:5,	48:11, 61:9,	<b>functionally</b>	<b>gave</b>
353:19, 386:17,	68:17, 72:21,	80:14	48:13, 51:9,
386:18	78:19, 87:1,	<b>funds</b>	133:8, 160:14,
<b>forwarded</b>	98:6, 100:6,	237:2, 239:2,	
157:15, 206:17,			

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

141

387:19 <b>general</b> 13:15, 87:15, 87:18, 97:20, 218:6, 218:7, 248:20, 271:2, 335:12, 359:9, 390:11 <b>generally</b> 13:8, 13:9, 65:22, 66:10, 66:14, 334:17 <b>gentleman</b> 122:8 <b>getting</b> 14:13, 23:15, 72:22, 76:6, 94:3, 104:2, 134:6, 134:7, 134:8, 142:4, 227:9, 237:19, 256:11, 273:7, 276:13, 301:19, 339:22, 360:13 <b>gia</b> 344:1 <b>giant</b> 315:18 <b>give</b> 15:4, 15:20, 16:4, 16:8, 36:17, 53:18, 53:19, 57:21, 91:8, 100:21, 102:8, 106:19, 115:3, 118:17, 128:5, 150:12, 153:3, 160:1, 160:11, 167:20, 169:9, 176:21, 183:22, 184:1, 184:9, 184:11, 190:11, 190:16, 195:6, 199:3, 199:7, 200:17, 230:4, 244:16, 251:8, 252:4, 254:20, 257:11,	259:5, 263:21, 271:21, 278:18, 292:8, 293:19, 305:13, 312:15, 317:16, 328:22, 330:9, 334:2, 334:3, 385:9, 386:2, 395:6, 398:2, 398:3, 398:5, 407:13, 408:19, 432:20 <b>given</b> 12:19, 57:2, 95:3, 111:17, 153:12, 160:3, 254:14, 258:13, 301:3, 313:2, 316:13, 321:7, 344:12, 400:8, 443:11, 445:6, 446:6 <b>gives</b> 37:15, 72:1, 205:20 <b>giving</b> 71:19, 89:19, 111:15, 117:10, 196:9, 233:21 <b>glad</b> 66:11, 326:19, 372:22 <b>global</b> 13:19, 13:22, 110:14, 111:2, 186:2, 189:10, 211:20, 232:12, 431:14, 435:18, 436:4 <b>globally</b> 185:18, 185:20, 260:22, 261:5, 261:9, 261:13, 262:6, 262:7, 262:12, 270:8 <b>goal</b> 145:19 <b>goes</b> 31:3, 63:14,	131:21, 238:22, 269:18 <b>gone</b> 25:1, 128:19, 196:4, 328:18, 328:20, 403:17, 435:3 <b>good</b> 11:3, 11:4, 11:6, 42:7, 67:9, 67:10, 91:3, 106:11, 234:16, 235:3, 264:1, 329:16, 329:19, 379:20, 383:14, 385:2, 391:6, 393:2, 394:12 <b>goodness</b> 384:16 <b>gorby</b> 3:13 <b>gosh</b> 351:13 <b>gotcha</b> 64:13, 165:4, 271:9, 299:6, 398:7 <b>gotten</b> 73:2, 94:20, 105:19, 119:22 <b>government</b> 17:19, 22:4, 22:18, 23:2, 23:20, 24:4, 25:16, 29:13, 60:5, 72:20, 76:7, 76:19, 132:22, 136:20, 189:6, 189:10, 198:5, 235:14, 236:7, 238:16, 267:6, 324:15, 324:18, 324:21, 324:22, 325:16, 326:3, 326:8, 438:12 <b>government's</b> 229:8	<b>gps</b> 239:21, 240:3, 240:15, 240:16, 240:19, 241:1, 241:5, 242:5, 242:9, 242:17, 243:12, 243:20, 244:6, 245:1, 245:6, 245:11, 246:5, 246:14, 246:21, 247:7, 247:11, 247:17, 247:18, 248:22, 283:13, 297:22, 298:2, 298:13, 334:21, 404:12 <b>gpss</b> 242:2 <b>grab</b> 302:21 <b>gracious</b> 310:11 <b>grade</b> 113:22 <b>grant</b> 274:16, 276:18, 281:14, 281:19, 281:22, 282:5, 282:7, 282:10, 282:12, 282:14, 282:18, 282:22, 283:10, 283:18 <b>granted</b> 69:21, 189:17, 190:7, 190:8, 260:19, 261:1, 261:9, 261:13, 262:19, 316:21 <b>granting</b> 206:10, 326:14 <b>gray</b> 37:1 <b>great</b> 14:4, 68:11, 118:12, 210:20, 218:10, 260:9, 260:17, 289:16, 326:21, 327:1,
---	---	--	--

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

142

413:22, 420:9 <b>greensboro</b> 2:6, 3:6, 9:15 <b>grounds</b> 177:7, 180:3, 186:9, 189:16, 201:14, 201:15, 201:21, 201:22, 202:3, 202:8, 202:9, 202:16, 202:17, 202:19, 203:14, 204:2, 204:11, 204:12, 204:16 <b>group</b> 277:11, 402:7 <b>grouping</b> 89:18 <b>groups</b> 89:20 <b>grow</b> 275:18 <b>grows</b> 329:11 <b>guarantee</b> 235:11, 235:22 <b>guess</b> 117:22, 150:14, 169:6 <b>guessing</b> 254:4 <b>gut-checked</b> 237:20 <b>gutierrez</b> 7:15, 103:11, 312:10, 314:3, 323:7, 323:11, 325:18, 326:5, 327:9 <b>gutierrez's</b> 324:4, 324:6 <b>guys</b> 105:20, 105:21, 155:7, 155:9, 158:1, 158:20, 159:19, 172:21, 199:14, 288:9	226:20, 226:21, 228:21, 308:6, 308:11, 336:7, 404:16, 435:13 <b>halfway</b> 234:20, 234:21 <b>hand</b> 11:12, 433:18, 433:21, 446:14 <b>handbook</b> 132:6, 177:2, 177:4, 205:9, 205:10, 205:11, 205:17 <b>handcuffs</b> 41:3, 133:15, 422:11 <b>handed</b> 88:15 <b>handled</b> 73:10 <b>hands</b> 333:16, 380:9 <b>handy</b> 186:1 <b>happen</b> 34:8, 75:19, 77:10, 127:20, 128:1, 253:19, 289:22 <b>happened</b> 41:21, 76:9, 89:19, 128:14, 129:22, 179:20, 204:6, 253:16, 253:18, 255:20, 267:19, 339:17, 353:18, 412:10, 412:11 <b>happening</b> 58:9, 169:14, 211:11, 277:12, 290:4, 405:14 <b>happens</b> 23:7, 34:11, 72:9, 76:15, 76:18, 101:19, 102:1, 122:14,	128:3, 128:12, 133:8, 138:13, 176:10, 270:12, 270:14 <b>happy</b> 16:22, 45:9, 45:16, 46:8, 49:5, 49:8, 49:11, 50:12, 53:4, 62:12, 70:3, 70:5, 77:14, 82:10, 90:10, 186:21, 230:5, 230:18, 256:15, 257:12, 259:17, 271:4, 272:16, 284:19, 290:2, 315:11, 317:3, 387:11, 394:3, 395:5, 395:11 <b>harder</b> 252:16 <b>harm</b> 265:6 <b>harmed</b> 251:10, 253:8, 254:18, 254:21, 255:13, 256:5, 261:15, 264:6, 264:12, 264:20 <b>harris</b> 3:4, 7:12, 9:20, 25:11, 31:17, 31:21, 32:1, 112:21, 118:21, 151:5, 151:8, 151:11, 151:17, 164:17, 164:22, 166:1, 168:7, 169:15, 263:4, 309:8, 317:12, 317:20, 318:10, 319:1, 320:10, 320:12, 320:19, 320:20, 321:3, 321:17, 395:18, 396:2,	396:9, 400:1, 440:13 <b>harrisonburg</b> 1:3, 9:9 <b>hartened</b> 169:1 <b>hazzar</b> 156:22, 158:14, 263:12 <b>he'll</b> 267:1, 394:13 <b>head</b> 46:19, 47:18, 56:14, 69:17, 70:8, 186:20, 204:8, 240:13, 255:14, 257:18, 305:11, 419:2 <b>hear</b> 20:14, 214:11, 366:21 <b>heard</b> 241:7, 366:19, 380:18, 391:8 <b>hearing</b> 29:19, 67:20, 67:21, 68:1, 71:19, 85:7, 85:17, 86:3, 86:8, 86:16, 89:5, 89:15, 249:20, 283:22, 284:21, 422:5 <b>hearings</b> 30:12, 141:11, 235:12, 235:18, 236:18, 237:5, 442:3 <b>heavily</b> 285:16
<b>H</b>			<b>heitman</b> 6:4 <b>held</b> 2:1, 29:5,
<b>half</b> 77:12, 82:15,			

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

143

129:8, 259:1, 267:17 <b>help</b> 23:2, 40:21, 58:19, 123:2, 163:15, 208:17, 221:13, 245:14, 251:13, 308:10, 310:11 <b>helpful</b> 92:1, 201:6, 310:14 <b>helping</b> 228:15, 228:16, 243:13, 308:12 <b>hence</b> 281:13 <b>here</b> 9:2, 11:7, 17:4, 21:1, 40:13, 46:10, 47:2, 47:15, 48:21, 49:7, 50:19, 51:14, 53:13, 55:3, 58:4, 68:13, 77:9, 78:10, 78:16, 78:22, 80:8, 81:17, 89:6, 97:12, 112:17, 118:12, 122:7, 129:5, 135:5, 161:7, 162:9, 163:9, 169:14, 169:17, 181:13, 186:18, 197:18, 198:16, 199:22, 204:9, 208:19, 217:21, 231:9, 233:7, 243:7, 253:15, 254:13, 254:19, 267:11, 286:4, 292:11, 298:21, 300:8, 300:12, 305:9, 312:13, 313:1, 315:8, 317:1, 318:3,	318:11, 318:22, 328:21, 333:12, 334:8, 337:17, 350:16, 353:12, 364:2, 364:16, 374:8, 392:21, 403:9, 408:6, 419:10, 423:5, 423:8, 442:14 <b>here's</b> 89:22, 101:11, 158:10, 170:14 <b>hereby</b> 445:2, 446:4 <b>herein</b> 366:2 <b>hereunto</b> 446:13 <b>hey</b> 133:1, 133:3, 208:19, 353:15, 369:4, 386:22, 387:1, 428:22 <b>hide</b> 169:9, 169:10, 169:13 <b>hiding</b> 169:8 <b>high</b> 108:4, 109:9, 109:10, 110:14, 326:17 <b>higher</b> 102:12, 110:8, 110:12, 110:13, 110:15, 111:2, 120:5, 316:7, 383:22, 437:11, 441:4 <b>hilarious</b> 222:9 <b>hire</b> 37:5, 422:11 <b>hired</b> 281:17 <b>historical</b> 14:14, 105:18, 244:8, 245:11	<b>historically</b> 229:2 <b>history</b> 38:18 <b>hit</b> 290:18, 355:22 <b>hoffar</b> 2:5, 3:5 <b>hold</b> 49:15, 114:18, 183:9, 196:12, 200:10, 285:22, 324:13, 373:6 <b>holds</b> 128:7 <b>home</b> 39:11, 101:20, 128:10, 133:18, 328:14 <b>homeland</b> 23:20, 33:21, 139:13, 225:19, 227:13, 227:18, 227:21, 235:19, 255:5, 257:4, 267:11 <b>homes</b> 9:4, 10:2, 11:9, 12:12, 13:12, 271:8, 293:4, 293:10, 293:15, 293:16, 297:20, 328:14 <b>homework</b> 233:21 <b>honest</b> 162:20, 348:14, 349:2, 351:4, 357:18, 438:2 <b>honestly</b> 246:5 <b>hope</b> 117:3, 166:14, 167:15, 179:19 <b>hopefully</b> 122:18 <b>hoping</b> 283:6	<b>horrible</b> 302:12 <b>horrified</b> 248:12 <b>hour</b> 45:11, 47:13, 53:9, 53:15, 53:16, 150:21, 387:12, 394:7 <b>hours</b> 31:13, 31:22, 49:13, 50:20, 53:9, 234:17, 234:19, 407:12, 409:9, 434:22 <b>house</b> 133:14 <b>houses</b> 422:12 <b>however</b> 167:2, 197:6, 265:11, 307:8 <b>huge</b> 241:16, 241:21, 417:20 <b>hugely</b> 241:8 <b>huh-uh</b> 60:11 <b>human</b> 66:21, 81:18, 146:8 <b>hundred</b> 44:10, 56:5, 58:8, 59:3, 91:17, 97:13, 231:2, 236:13, 268:4, 268:10, 291:15, 294:19, 413:20 <b>hundreds</b> 128:14, 182:21, 333:18 <b>hunters</b> 39:2, 422:11 <b>hunting</b> 37:1 <b>husband</b> 39:10
---	--	--	--

CONTAINS CONFIDENTIAL PORTIONS  
12422

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

144

<b>hyperactive</b> 229:8	<b>identified</b> 45:22, 204:19, 261:16	236:6, 236:10, 236:19, 237:2, 238:1, 238:8, 238:14, 238:22, 239:5, 239:9	26:4, 46:8, 51:3, 52:8, 71:3, 87:9, 146:9, 204:17, 215:5, 217:11,
<b>I</b>			
<b>i's</b> 320:13	<b>identify</b> 9:17, 122:21, 149:16, 175:8,	131:5, 131:6, 208:18, 236:10, 236:12, 254:21	217:15, 218:13, 221:13, 227:4, 241:8, 243:5, 245:15, 247:21, 253:22, 360:18,
<b>i(c</b> 416:2	198:17, 242:10,	15:9, 16:2, 29:4, 40:10, 42:21, 43:5, 126:17, 145:20, 245:18, 247:6, 247:7, 367:7	390:11, 400:7
<b>i(c)s</b> 416:16	<b>identity</b> 38:11, 149:1, 149:20, 255:12, 262:18, 312:14, 380:1, 392:22	<b>immigrant's</b> 13:5, 131:6, 208:18, 236:10, 236:12, 254:21	<b>importantly</b> 248:18
<b>i3</b> 130:18	<b>ignore</b> 286:20, 286:22, 287:1	<b>immigrants</b> 15:9, 16:2, 29:4, 40:10, 42:21, 43:5, 126:17, 145:20, 245:18, 247:6, 247:7, 367:7	<b>impossible</b> 57:2, 95:8
<b>ice</b> 34:4, 34:8, 36:8, 36:19, 37:16, 132:10, 133:17, 135:9, 137:6, 137:10, 141:10, 176:17, 182:3, 182:5, 196:6, 196:7, 206:19, 208:15, 230:10, 324:9	<b>ignored</b> 211:5	<b>immigration</b> 15:10, 15:12, 15:17, 18:17, 69:19, 122:12, 124:13, 125:22, 127:7, 138:20, 146:11, 157:5, 158:12, 163:16, 235:10, 235:15, 245:4, 265:15, 265:17, 340:14, 363:21, 367:16, 368:14, 370:1, 370:9, 372:11, 373:3, 374:19, 401:2	<b>imprecise</b> 389:6
<b>idea</b> 17:12, 19:19, 20:9, 34:14, 40:15, 40:21, 52:11, 133:20, 199:21, 200:12, 321:12, 345:10, 375:4, 375:6, 376:3, 376:7, 377:19, 377:21, 407:11	<b>immediate</b> 124:7	<b>improperly</b> 166:16	
<b>identification</b> 11:15, 67:12, 85:4, 88:8, 131:13, 138:4, 156:18, 158:9, 163:13, 216:11, 256:21, 264:12, 286:8, 294:2, 297:13, 315:17, 322:12, 339:3, 341:11, 343:12, 348:7, 371:22, 401:1, 414:18, 425:5, 427:8	<b>immediately</b> 83:2, 128:16, 245:1	<b>inaccurate</b> 113:4, 121:14, 162:11, 166:21, 228:21, 290:7, 290:10, 299:13, 365:1, 365:3	
	<b>immigrant</b> 22:6, 22:14, 22:19, 23:21, 25:16, 26:18, 26:20, 28:13, 28:22, 30:6, 32:22, 33:3, 33:5, 34:16, 35:17, 40:1, 40:16, 122:21, 123:12, 124:20, 127:6, 130:12, 130:16, 130:19, 131:3, 131:5, 131:21, 133:18, 135:18, 137:5, 137:11, 139:21, 141:6, 142:19, 142:21, 145:22, 211:3, 211:4, 235:17, 236:1,	<b>impact</b> 124:12, 273:1, 329:14, 330:21, 442:20	<b>inadvertent</b> 320:14
		<b>impacted</b> 129:9, 205:1, 266:11, 269:22, 270:18	<b>inappropriate</b> 41:7, 42:5, 80:17, 179:16, 229:5, 418:22, 424:2
		<b>implement</b> 245:17	<b>inappropriately</b> 42:4, 125:10
		<b>implication</b> 41:12	<b>inartful</b> 148:12, 193:5, 390:1
		<b>implying</b> 126:9	<b>inc</b> 1:8, 1:12, 5:11, 7:3, 7:5, 7:8, 9:4, 9:5, 9:7, 11:8,
		<b>important</b> 18:12, 18:14,	

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

145

12:11, 292:18, 401:5, 415:9 <b>incidents</b> 227:2 <b>include</b> 44:13, 46:2, 111:7, 149:9, 150:2, 150:3, 188:6, 263:22, 293:3, 297:19, 299:1, 333:2, 334:4, 335:10, 336:17, 415:22 <b>included</b> 195:15, 333:9 <b>includes</b> 108:19, 156:22, 195:10, 333:4, 432:16, 438:11 <b>including</b> 54:13, 170:17, 193:7, 345:4 <b>income</b> 288:15, 289:21, 297:6, 297:10, 300:17, 328:15 <b>inconsequential</b> 58:8 <b>inconsistency</b> 365:18 <b>inconsistent</b> 356:13, 361:5 <b>incorrect</b> 112:14, 229:17, 299:14 <b>incorrectly</b> 175:13, 300:13 <b>increase</b> 247:10, 389:11, 389:14 <b>increased</b> 229:17, 345:2 <b>increasing</b> 347:16, 388:14, 388:21 <b>incredibly</b> 247:21, 326:13 <b>incurred</b> 393:10, 394:10,	394:11, 395:4, 406:3, 406:8, 435:7, 439:1 <b>indemnification</b> 13:20, 250:6, 335:11 <b>indemnify</b> 213:21, 213:22, 438:4 <b>indemnitor</b> 236:3 <b>indemnitors</b> 339:7 <b>indemnity</b> 61:12, 66:12, 78:21, 87:15, 87:19, 91:3, 97:20, 212:3, 212:6, 248:21, 335:12, 339:4, 345:16, 359:9, 399:10, 399:16, 400:11, 400:16, 400:17, 401:3, 401:9, 426:14 <b>independent</b> 90:9, 94:18, 155:12, 212:9, 256:8, 403:4 <b>ineterminate</b> 368:3, 370:14 <b>indicate</b> 185:14, 185:17 <b>indicated</b> 41:13, 196:2, 196:4, 224:1, 231:21, 270:21, 283:10, 295:16, 331:1, 375:10 <b>indicates</b> 130:11, 247:9 <b>indication</b> 205:20 <b>indicia</b> 302:2 <b>individual</b> 27:6, 36:7, 36:11, 38:2,	38:18, 58:9, 58:14, 66:7, 66:21, 71:17, 125:16, 128:4, 140:6, 195:11, 196:4, 208:12, 228:16, 240:21, 245:12, 251:10, 253:3, 253:7, 253:13, 253:20, 325:12, 393:22, 416:8 <b>individual's</b> 124:13, 124:17 <b>individuals</b> 37:2, 128:6, 188:3, 196:2, 240:8, 247:11, 266:7, 277:12, 325:15 <b>infancy</b> 310:12 <b>inference</b> 42:4 <b>information</b> 13:15, 13:16, 14:14, 17:8, 47:9, 48:7, 49:2, 50:5, 50:6, 72:13, 72:14, 72:16, 73:15, 73:20, 90:14, 95:9, 172:15, 186:21, 188:12, 189:21, 191:3, 191:12, 191:19, 205:8, 207:4, 211:3, 217:11, 217:15, 218:13, 244:18, 251:22, 252:9, 262:3, 264:18, 264:22, 274:13, 277:6, 287:21, 290:12, 295:9, 295:10, 295:12, 296:15, 300:5, 300:7, 300:14,	301:16, 305:8, 316:18, 318:12, 324:20, 326:6, 332:22, 363:10, 384:16, 400:9, 403:21, 404:4, 404:10, 404:13, 406:15, 407:1, 411:8, 413:8, 414:11, 415:8, 415:16, 415:17, 416:1, 416:11, 417:2, 417:4, 417:6, 417:12, 417:15, 417:17, 418:3, 418:8, 418:10, 420:11, 421:18, 432:5, 432:7, 432:20, 433:2, 441:8, 441:9, 443:20 <b>initial</b> 201:3, 311:16, 384:13, 394:13, 394:14, 395:20, 404:6 <b>initially</b> 196:19, 240:6, 384:11, 414:4 <b>initiated</b> 123:21 <b>injunction</b> 224:22, 225:2, 225:6, 225:9, 225:17, 249:13, 272:22, 283:22, 384:5, 384:20 <b>injunctions</b> 214:19 <b>injunctive</b> 50:7, 52:14, 224:2, 295:18 <b>input</b> 271:14, 274:17, 288:11, 288:20 <b>inputted</b> 277:6, 288:12, 288:13, 295:5,
---	--	---	--

CONTAINS CONFIDENTIAL PORTIONS

12424

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

146

296:15 <b>inputting</b> 276:21, 277:1 <b>inquiry</b> 155:15, 156:2 <b>insane</b> 23:9, 81:16 <b>insisted</b> 410:13 <b>insofar</b> 87:7, 335:9, 442:22 <b>inspect</b> 430:3 <b>inspection</b> 426:2 <b>installed</b> 242:13, 242:16 <b>instance</b> 39:3, 39:6, 194:6, 250:3, 253:17, 254:20, 313:19, 380:1, 385:16, 402:5 <b>instances</b> 83:3, 137:5, 195:2, 196:12, 196:13, 198:8, 208:10, 208:11, 209:20, 210:2, 210:15, 211:2, 211:8, 245:5, 250:11, 250:13, 251:8, 251:11, 253:16, 267:12, 320:16, 380:13, 380:19, 380:22, 383:16, 393:22, 395:9 <b>instantaneous</b> 76:4 <b>instead</b> 142:5, 168:8, 237:18, 436:5 <b>instruct</b> 112:4, 168:7 <b>instructive</b> 269:14	<b>insufficient</b> 421:16, 427:4 <b>insurance</b> 1:5, 9:6, 9:19, 135:6, 329:18, 422:17 <b>intellectually</b> 357:18 <b>intelligently</b> 72:8 <b>intend</b> 13:1, 182:13, 237:10 <b>intended</b> 411:7, 413:13 <b>intention</b> 12:22, 369:22 <b>interest</b> 305:15, 305:22, 307:21, 309:6, 432:21, 446:11 <b>interested</b> 46:1, 75:8, 117:22, 269:16, 271:3, 278:6, 280:10 <b>interesting</b> 215:3, 364:4 <b>interim</b> 129:6, 196:14 <b>interject</b> 331:8 <b>interjected</b> 330:9 <b>intermediary</b> 196:18 <b>intern</b> 10:7 <b>internal</b> 54:12 <b>interrogatories</b> 153:14, 153:16 <b>interrupt</b> 19:16, 117:6, 159:5, 210:4, 225:11 <b>interrupting</b> 33:17, 41:17,	79:4, 114:21, 216:7, 225:5, 397:18 <b>intervene</b> 405:17, 405:21 <b>intervenor</b> 256:1, 261:17 <b>intervenors</b> 256:8, 264:10 <b>interview</b> 133:9, 133:17 <b>invalid</b> 175:13 <b>investigation</b> 154:22, 155:1, 350:21, 351:13 <b>invited</b> 256:8 <b>invoiced</b> 113:5, 122:12 <b>invoices</b> 5:13, 5:15, 13:22, 47:20, 48:19, 49:17, 50:10, 51:1, 51:17, 51:18, 52:3, 52:4, 53:12, 53:22, 54:10, 55:7, 56:17, 57:9, 57:20, 57:22, 58:5, 58:22, 60:21, 61:1, 69:8, 69:15, 71:11, 80:11, 81:3, 81:9, 81:19, 82:3, 82:4, 82:5, 82:20, 83:1, 84:5, 84:17, 85:5, 85:15, 85:18, 86:15, 87:6, 87:22, 88:5, 89:18, 89:20, 91:1, 96:9, 108:21, 147:11, 147:14, 148:6, 148:18,	149:5, 149:8, 149:17, 150:1, 150:3, 150:4, 150:5, 150:9, 151:3, 151:9, 151:15, 151:20, 166:16, 174:18, 175:5, 185:6, 197:5, 208:6, 212:11, 213:1, 213:9, 214:12, 216:19, 216:22, 223:3, 223:4, 233:9, 234:3, 249:17, 249:21, 250:3, 250:12, 270:5, 334:5, 334:10, 334:16, 335:19, 337:2, 337:9, 383:20, 436:15 <b>involved</b> 39:9, 262:2, 411:1, 434:22 <b>involving</b> 38:10, 229:17, 256:4 <b>ira</b> 7:14, 7:18, 7:19, 8:4, 8:5, 101:1, 211:12, 342:11, 348:22, 351:3, 352:21, 353:17, 369:2, 386:20, 392:7 <b>issuance</b> 192:14, 219:6 <b>issue</b> 24:9, 33:22, 34:2, 34:4, 38:9, 66:22, 87:9, 101:17, 112:17, 116:17, 125:9, 126:5, 137:5, 137:7, 137:8, 137:10, 149:15, 163:22, 179:4, 179:5,
--	--	---	--

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

147

180:5, 189:6,  
 189:8, 189:11,  
 203:1, 236:9,  
 240:18, 282:14,  
 373:3, 378:22,  
 384:1  
**issued**  
 19:6, 26:16,  
 27:3, 33:7,  
 33:20, 35:18,  
 44:1, 44:15,  
 44:21, 45:3,  
 46:14, 47:3,  
 47:4, 49:1,  
 49:15, 50:22,  
 52:7, 53:11,  
 53:22, 59:1,  
 70:17, 76:1,  
 89:22, 91:5,  
 93:6, 98:15,  
 104:5, 106:7,  
 108:8, 114:9,  
 123:18, 126:21,  
 129:6, 130:2,  
 136:12, 136:21,  
 137:3, 140:9,  
 140:12, 142:13,  
 151:4, 151:9,  
 176:4, 181:19,  
 182:17, 187:11,  
 188:3, 193:18,  
 200:1, 213:1,  
 214:3, 225:18,  
 228:4, 245:3,  
 247:8, 257:5,  
 273:1, 342:22,  
 435:12  
**issues**  
 15:15, 21:15,  
 22:2, 22:18,  
 25:15, 101:3,  
 121:4, 130:17,  
 182:2, 209:16,  
 229:16, 260:10,  
 330:5, 330:6,  
 399:5, 427:6,  
 443:2  
**issuing**  
 107:2, 114:14,

366:17, 367:6,  
 367:21, 368:13,  
 369:22, 370:9,  
 372:11, 388:13  
**items**  
 232:21, 277:3  
**iterations**  
 277:9, 296:7  
**itself**  
 22:4, 129:11,  
 129:22, 219:14,  
 248:16, 250:17,  
 251:5, 265:6,  
 427:11  


---

  
**J**  


---

  
**jail**  
 101:18, 238:20  
**january**  
 6:9, 7:4, 7:6,  
 7:9, 14:21,  
 67:14, 85:6,  
 85:16, 86:16,  
 87:13, 88:1,  
 88:4, 89:5,  
 246:12, 287:15,  
 292:2, 350:6,  
 350:13, 355:3,  
 363:19, 370:10  
**jeremy**  
 4:17, 9:13  
**job**  
 1:20, 35:12,  
 35:13  


---

  
**john**  
 4:9, 9:22,  
 18:15, 103:19,  
 200:21, 237:15  
**johnson**  
 193:8, 194:18  
**joint**  
 212:10  


---

[REDACTED]  
**judge**  
 67:2, 85:7,  
 101:19, 128:7,  
 128:11, 128:14,  
 141:10, 225:12,  
 256:7, 403:4,  
 431:19  
**judgment**  
 109:8  
**judicial**  
 272:4  
**judith**  
 1:22, 2:13,  
 446:2  
**judy**  
 10:13  
**juliana**  
 7:15, 103:11,  
 193:8, 206:18,  
 207:2, 207:7,  
 211:11, 311:18,  
 314:3, 314:4,  
 314:21, 323:7,  
 325:18, 327:9,  
 366:7  
**juliana's**  
 199:13, 323:18  
**julie**  
 101:3  
**july**  
 70:15, 70:16,  
 360:6  
**jumped**  
 35:10  
**jumping**  
 257:18  
**june**  
 6:4, 8:15,  
 69:10, 360:5,  
 388:15, 388:21,  
 389:10, 414:20,  
 415:7, 415:13,  
 419:16, 419:17,  
 419:22, 420:16,  
 420:21, 421:8

**justice**  
 128:13, 222:21,  
 235:20, 265:20,  
 265:22, 266:3,  
 266:22, 267:10,  
 269:4, 269:6  
**justified**  
 64:18  
**justifying**  
 116:1  


---

  
**K**  


---

  
**keep**  
 45:13, 45:15,  
 48:3, 48:4,  
 49:4, 49:9,  
 52:18, 52:22,  
 53:1, 53:3,  
 57:5, 58:1,  
 58:2, 58:3,  
 78:2, 92:10,  
 106:22, 110:3,  
 110:4, 117:2,  
 127:2, 130:12,  
 134:2, 148:3,  
 160:10, 184:7,  
 197:15, 226:7,  
 246:5, 247:3,  
 292:22, 417:12,  
 417:14, 418:21  
**keeping**  
 17:2, 52:17,  
 92:6, 132:15  
**keeps**  
 117:10  
**kept**  
 130:13, 244:13,  
 272:20  
**key**  
 137:4  
**kidding**  
 98:3  
**kids**  
 254:9  
**killing**  
 292:11  
**kind**  
 13:13, 33:22,

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

148

66:8, 102:1, 115:21, 127:2, 139:17, 148:6, 176:6, 178:3, 178:6, 179:3, 179:4, 179:6, 195:14, 196:14, 197:14, 208:16, 209:21, 222:16, 231:10, 243:9, 284:4, 364:15, 400:16 <b>kinds</b> 27:5 <b>knew</b> 72:4, 193:5, 405:13 <b>knock</b> 133:14 <b>knowing</b> 120:8, 172:2, 251:13 <b>knowledge</b> 25:4, 25:10, 31:8, 62:12, 86:4, 87:21, 88:2, 88:5, 90:9, 95:10, 112:7, 134:7, 134:9, 155:12, 206:6, 206:22, 279:7, 320:15, 401:8, 401:11 <b>known</b> 290:21 <b>knows</b> 267:6, 324:18 <b>kowalczuk</b> 4:3, 10:5, 396:12 <b>kpi</b> 13:18, 58:12, 226:8, 271:21, 328:21, 337:10 <b>kpis</b> 273:19 <hr/> <b>L</b> <b>lack</b> 349:13, 353:8	<b>land</b> 306:8 <b>language</b> 40:14, 219:20, 232:19, 426:17 <b>large</b> 108:10, 159:19, 227:16, 312:21, 438:13 <b>largely</b> 177:13 <b>larger</b> 94:2, 229:4, 229:6, 269:11, 270:12 <b>largest</b> 334:16 <b>last</b> 16:6, 31:13, 55:16, 61:12, 66:1, 97:22, 120:1, 153:12, 155:2, 157:18, 161:14, 165:13, 166:12, 166:20, 168:19, 170:12, 171:1, 228:2, 258:6, 277:17, 286:14, 317:6, 320:12, 320:14, 340:7, 366:14, 367:2, 373:10, 386:7, 387:9 <b>lastly</b> 432:19 <b>late</b> 59:15, 59:16, 175:22, 177:19, 200:9, 230:9 <b>later</b> 70:22, 178:9, 227:15, 253:10, 280:12, 331:18, 348:14, 349:1, 369:2, 421:12 <b>latest</b> 367:19 <b>laura</b> 5:18, 6:3, 6:7,	6:10, 6:16, 55:14, 138:12, 155:3, 156:21, 158:11, 348:13, 348:20, 350:6, 350:12, 350:14, 350:16, 350:22, 351:3, 354:5 <b>laura's</b> 350:11, 352:21 <b>law</b> 4:4, 34:3, 36:22, 37:8, 73:11, 77:4, 177:13, 179:2, 207:11, 207:12, 237:1, 409:6 <b>lawsuit</b> 116:18, 116:22, 117:17, 119:12 <b>lawyer</b> 69:20, 126:6, 408:4, 408:8, 408:10, 408:17, 408:20, 409:4 <b>layperson's</b> 326:6 <b>lead</b> 282:11, 282:13 <b>leads</b> 243:17 <b>learned</b> 113:22, 321:11, 349:1, 400:18 <b>least</b> 99:19, 186:10, 187:9, 198:21, 230:22, 231:7, 231:12, 293:8, 367:14, 373:15, 438:11 <b>leave</b> 12:22, 87:8, 186:22, 293:9, 334:11, 382:9, 393:7, 403:9 <b>lecture</b> 117:10	<b>led</b> 303:13, 405:5 <b>ledger</b> 13:15 <b>left</b> 307:9, 307:10, 394:7, 398:18 <b>legal</b> 18:5, 36:21, 37:14, 74:5, 126:5, 179:4, 204:3, 390:16, 408:14, 408:19, 409:3, 434:16, 435:1, 435:3, 440:1, 440:2, 440:3, 440:11 <b>legally</b> 267:9 <b>legitimate</b> 107:17, 107:18 <b>length</b> 383:15 <b>lengthy</b> 31:19 <b>lepers</b> 246:11 <b>less</b> 100:19, 107:16, 194:20, 240:5, 240:9, 247:15, 253:5, 394:7 <b>let's</b> 14:10, 14:13, 15:7, 40:12, 57:9, 95:20, 98:10, 103:1, 103:7, 110:2, 112:21, 114:10, 118:19, 118:22, 119:2, 127:12, 147:16, 160:9, 161:2, 178:15, 197:12, 216:9, 217:18, 220:9, 228:3, 233:14, 238:10, 246:18, 259:21, 260:1,
--	---	--	---

CONTAINS CONFIDENTIAL PORTIONS  
12427

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

149

292:21, 293:22, 301:21, 304:13, 351:20, 353:16, 353:18, 369:12, 371:18, 383:9, 400:21, 424:6, 424:9, 424:10, 424:11 <b>letter</b> 7:17, 8:3, 8:15, 8:17, 89:22, 100:15, 102:5, 102:11, 102:18, 103:1, 103:8, 103:11, 125:5, 125:6, 132:7, 144:5, 155:9, 175:15, 176:20, 178:19, 178:20, 205:6, 205:13, 205:15, 205:16, 206:5, 206:9, 206:14, 206:17, 327:2, 327:4, 340:2, 340:7, 340:15, 340:16, 341:2, 342:13, 342:16, 342:22, 343:18, 344:3, 347:2, 347:10, 348:2, 349:10, 351:12, 353:3, 354:9, 354:15, 361:9, 363:14, 364:12, 369:2, 406:12, 415:18, 417:10, 418:7, 418:21, 420:20, 421:1, 421:2, 424:4, 424:19, 425:6, 425:12, 426:1, 426:10, 426:17, 427:9, 427:21, 429:4, 429:21, 430:2 <b>letters</b> 210:18, 386:19,	407:2, 410:5 <b>letting</b> 397:22 <b>level</b> 75:21, 175:17, 181:11, 337:19, 337:20, 407:3 <b>liabilities</b> 291:11, 305:7, 331:21, 332:1, 333:9, 335:8, 336:10, 336:13, 336:16, 336:17, 337:22, 338:17 <b>liability</b> 19:19, 19:20, 20:3, 20:20, 20:21, 21:12, 21:14, 21:18, 23:9, 24:10, 24:14, 25:4, 26:6, 26:7, 26:11, 29:6, 81:15, 96:8, 96:10, 116:11, 116:13, 119:17, 212:10, 332:19, 333:3, 333:4, 334:8, 334:17, 346:6, 382:5, 422:18 <b>liberty</b> 124:3 <b>libre</b> 9:4, 10:1, 11:8, 12:11, 13:18, 227:7, 271:7, 329:20, 384:14, 401:14, 401:16, 401:19, 402:2, 402:8, 405:16 <b>licensed</b> 37:7 <b>lie</b> 92:22 <b>lied</b> 42:5, 68:11,	353:13 <b>liens</b> 306:11, 307:2, 307:5 <b>life</b> 13:21, 14:18, 14:19, 17:16, 41:1, 81:14, 83:20, 240:7, 275:8, 389:19 <b>liked</b> 197:8, 197:10, 310:13 <b>likely</b> 38:11, 100:19, 104:16, 104:20, 178:22, 183:2, 229:2, 252:10, 402:5 <b>limandri</b> 306:22, 359:22, 374:20, 375:2, 375:8, 375:9, 375:21, 376:20, 377:2, 377:13, 378:3, 378:18, 378:21 <b>limandri's</b> 376:12 <b>limit</b> 134:14 <b>limited</b> 38:15, 351:22 <b>line</b> 24:22, 42:17, 89:18, 147:9, 219:3, 219:21, 364:13, 389:1, 435:4 <b>lines</b> 70:9, 183:21, 191:18, 233:19, 327:20 <b>liquid</b> 305:6, 305:12, 336:13, 336:15, 337:1, 337:8, 337:17, 338:2,	432:6, 432:14, 433:15 <b>list</b> 13:11, 13:19, 84:21, 85:5, 122:4, 141:12, 198:17, 199:4, 211:20, 217:22, 232:21, 234:22, 251:12, 256:10, 260:16, 263:13, 292:3, 363:8 <b>listed</b> 12:5, 85:15, 121:10, 160:15, 160:17, 216:5 <b>listen</b> 71:22, 221:21 <b>listing</b> 121:4 <b>litany</b> 78:3 <b>literally</b> 142:7, 142:8, 152:14, 153:17, 208:18, 219:4, 312:18, 341:22, 384:21, 386:20 <b>litigation</b> 82:16, 98:1, 214:17, 224:16, 241:22, 252:13, 284:9, 285:16, 297:16, 336:7, 355:21, 412:12, 438:3, 438:7, 442:2, 443:18 <b>little</b> 14:10, 48:6, 51:11, 147:21, 148:5, 149:21, 189:4, 197:15, 199:2, 269:12, 339:22, 364:3, 386:22 <b>live</b> 128:11 <b>lives</b> 81:17, 129:9,
--	---	--	---

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

150

230:6, 254:7, 254:9, 254:17, 385:5 <b>llc</b> 3:13 <b>llp</b> 2:5, 3:5 <b>loans</b> 335:15 <b>location</b> 132:11, 242:10, 244:22 <b>locational</b> 242:10 <b>lock</b> 421:21, 422:4 <b>locked</b> 238:19 <b>locking</b> 422:18 <b>login</b> 274:2 <b>long</b> 44:13, 53:21, 172:20, 223:16, 230:16, 235:15, 246:1, 256:11, 268:11, 319:19, 425:6 <b>longer</b> 18:18, 18:22, 19:7, 100:18, 124:2, 124:5, 147:21, 248:15, 258:16, 366:17, 367:6, 373:3, 411:9 <b>look</b> 43:13, 45:18, 50:12, 51:4, 57:3, 58:11, 58:13, 60:7, 60:14, 61:19, 62:19, 66:9, 70:3, 70:5, 71:14, 72:6, 76:10, 77:16, 102:11, 181:7,	181:8, 186:6, 210:15, 212:17, 217:18, 219:5, 228:7, 245:8, 245:11, 258:9, 273:19, 284:13, 284:20, 291:1, 310:18, 353:17, 363:17, 382:19, 386:9, 392:3, 393:19, 393:22, 397:19, 407:10, 407:11, 425:11, 426:9, 427:15, 440:22, 441:1 <b>looked</b> 77:13, 173:20, 269:12, 313:6 <b>looking</b> 14:7, 68:21, 69:4, 69:6, 70:11, 71:17, 84:2, 94:15, 94:16, 103:8, 111:4, 122:10, 138:5, 138:18, 140:7, 146:10, 155:1, 159:9, 163:4, 163:10, 179:2, 179:3, 200:19, 217:6, 217:10, 217:14, 217:16, 218:10, 218:14, 258:5, 262:15, 282:5, 284:12, 292:5, 292:7, 293:2, 294:5, 332:9, 335:18, 372:20, 408:20, 435:1 <b>looks</b> 89:17, 131:16, 286:10, 292:1, 336:1, 429:7 <b>loses</b> 267:14 <b>loss</b> 7:3, 7:6, 7:9,	271:12, 277:21, 278:9, 279:1, 279:18, 280:1, 280:6, 280:20, 281:7, 287:6, 287:15, 288:1, 290:6, 292:2, 293:18, 294:9, 296:4, 296:12, 297:14, 297:18, 298:1, 301:7, 303:2, 326:16, 390:21, 391:1, 391:2, 406:9, 431:12, 435:14, 439:2, 440:9, 442:16 <b>losses</b> 116:20, 116:21, 392:22 <b>lost</b> 82:14, 82:16, 82:17, 139:17, 347:18 <b>lot</b> 14:5, 27:14, 52:10, 86:13, 102:12, 151:21, 201:6, 207:3, 213:13, 233:2, 248:1, 283:16, 335:13, 336:8, 394:2, 440:18 <b>love</b> 222:10 <b>lower</b> 110:19, 110:21 <b>luck</b> 92:12 <b>lunch</b> 120:17, 147:12, 147:22 <b>lying</b> 86:22	70:13, 121:6, 138:19, 138:22, 146:12, 147:2, 182:9, 185:7, 225:10, 260:12, 277:18, 294:13, 340:16, 397:17, 399:8, 410:9, 424:20, 426:5 <b>mad</b> 432:2 <b>made</b> 17:19, 26:12, 27:20, 50:17, 55:3, 59:21, 60:3, 60:6, 64:2, 78:18, 87:2, 101:1, 107:9, 140:6, 142:1, 143:10, 156:2, 170:16, 195:9, 204:22, 209:5, 210:19, 215:9, 224:5, 228:2, 248:22, 251:4, 261:22, 271:16, 276:18, 285:14, 317:6, 328:7, 336:21, 338:21, 339:10, 346:12, 355:8, 359:18, 360:10, 372:5, 376:1, 376:14, 392:1, 400:1, 402:21, 425:17, 425:21, 440:19, 442:3 <b>magnitude</b> 338:1 <b>main</b> 188:9 <b>maintain</b> 57:16, 291:8, 418:9 <b>maintained</b> 274:1 <b>major</b> 297:7
--	---	--	--

CONTAINS CONFIDENTIAL PORTIONS

12420

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

151

<b>majority</b>	349:8, 350:2, 23:8, 33:10, 33:11, 33:13, 105:12, 106:2, 125:4, 140:4, 151:19, 187:15, 187:16, 187:17, 188:2, 188:13, 188:14, 188:15, 188:18, 188:19, 189:2	<b>manual</b>	74:19, 75:15, 100:12, 193:9, <b>mar</b>
<b>make</b>	37:10, 60:2, 13:1, 15:8, 20:8, 24:19, 39:8, 41:3, 41:4, 58:18, 62:3, 62:8, 62:12, 70:21, 75:21, 91:2, 97:10, 104:21, 125:20, 129:2, 139:10, 140:9, 140:10, 142:21, 149:11, 149:14, 153:19, 155:15, 157:16, 157:17, 165:6, 165:7, 173:22, 174:9, 175:19, 175:20, 177:21, 182:14, 183:20, 184:3, 189:12, 197:13, 199:3, 209:1, 209:9, 212:18, 223:21, 224:6, 225:6, 227:14, 230:5, 238:4, 238:6, 238:15, 245:14, 246:2, 247:18, 251:6, 252:8, 252:15, 265:22, 268:3, 269:18, 274:21, 285:17, 295:19, 300:13, 301:6, 303:7, 309:21, 337:5, 343:22, 344:1, 347:14,	<b>march</b>	194:3, 306:21, 306:22, 307:2, 376:20 <b>mario</b>
<b>making</b>	94:14, 94:21, 120:14, 124:6, 130:7, 174:12, 231:10, 241:5, 247:19, 252:10, 266:3, 274:21, 275:4, 329:10	8:21, 9:11, 49:14, 54:4, 54:18, 73:4, 91:4, 230:8, 321:22, 339:11, 340:2, 340:20, 340:22, 341:2, 341:13, 341:19, 342:1, 342:3, 342:7, 342:16, 342:22, 343:13, 344:11, 344:16, 347:10, 347:11, 348:8, 348:17, 349:5, 349:9, 349:16, 349:17, 350:4, 353:2, 354:9, 355:3, 355:13, 356:11, 360:20, 360:21, 361:7, 361:9, 363:14, 365:7, 365:22, 366:1, 374:15, 379:3, 386:19, 386:20, 386:21, 406:4, 409:20, 410:6, 424:19, 424:22, 425:17, 426:4, 426:22, 427:10, 427:17, 428:1, 428:6, 428:9, 428:13, 428:15, 429:5, 429:6, 429:7, 429:10, 429:13, 429:19, 429:20, 429:21, 430:1, 430:3, 446:15 <b>marco</b>	161:4, 216:9, 256:19, 285:21, 286:4, 293:22, 297:11, 315:14, 331:18, 348:4, 371:18, 371:19, 400:21 <b>marked</b>
<b>man</b>	205:2, 392:1	11:14, 11:20, 67:11, 85:3, 88:7, 88:16, 131:12, 138:3, 156:17, 158:8, 163:12, 216:10, 256:20, 286:2, 286:7, 292:15, 292:17, 294:1, 297:12, 315:16, 321:21, 322:11, 339:2, 341:10, 343:11, 348:6, 371:21, 400:22, 414:17, 425:4, 427:7 <b>marking</b>	11:12, 339:19, 343:4 <b>mary</b>
<b>manager</b>	132:6, 177:2, 177:4, 227:3, 227:6, 272:21, 348:21	427:7 428:6, 428:9, 428:13, 428:15, 429:5, 429:6, 429:7, 429:10, 429:13, 429:19, 429:20, 429:21, 430:1, 430:3, 446:15 <b>marco</b>	3:12, 8:15, 8:18, 8:20, 10:9, 10:10, 420:1, 421:2, 428:8, 429:8 <b>master</b>
<b>managing</b>	272:2	429:20, 429:21, 430:1, 430:3, 446:15	45:21, 293:13 <b>match</b>
<b>manner</b>	257:7	73:11, 74:3,	57:4, 160:20 <b>material</b>
	273:22, 356:9		347:4

CONTAINS CONFIDENTIAL PORTIONS  
12430

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

152

<b>math</b>	105:7, 105:18, 105:1, 108:13, 108:17, 302:12, 435:19, 435:21	308:19, 329:17, 336:19, 337:22, 338:17	<b>micheal</b>
<b>mathematical</b>	143:4, 146:7, 108:5, 113:21, 398:1	26:20, 40:9, 40:17, 196:8, 410:1, 410:10,	<b>middle</b>
<b>matter</b>	189:4, 198:3, 9:6, 17:1, 25:8, 95:11, 112:9, 112:11, 116:2, 196:1, 213:8, 247:16, 254:10, 279:20, 320:2, 340:19, 377:20, 420:13	410:17, 411:22, 412:6, 412:14, 412:16, 413:11, 413:12, 413:13, 428:5, 428:6	<b>middlesex</b>
<b>matters</b>	272:10, 274:4, 95:14, 412:18	40:22, 235:12, 235:18	<b>might</b>
<b>maybe</b>	281:15, 285:2, 287:22, 299:9, 325:16, 328:2, 345:15, 346:20, 356:5, 359:16, 360:22, 362:20, 364:10, 368:10, 370:15, 371:1, 371:8, 372:12, 375:19, 379:21, 380:3, 389:15, 391:11, 405:1, 405:18, 407:11, 411:18, 412:19, 423:5, 429:6, 438:6, 439:20	38:12, 39:12, 39:14, 238:9, 238:11, 238:13, 238:17, 238:19, 327:9	<b>meetings</b>
<b>mcfadden</b>	4:10	39:13	<b>member</b>
<b>mcguirewoods</b>	335:19	<b>memory</b>	<b>mike</b>
<b>mclean</b>	1:16, 2:8, 3:8, 9:16	196:10, 199:17, 270:9, 274:6, 397:1, 397:2	8:5, 8:9, 8:11, 67:8
<b>mcnutt</b>	207:12	<b>mention</b>	<b>million</b>
<b>mdonovan@nexushe- lps</b>	7:20	392:6, 392:10, 417:9, 417:11, 421:3	54:6, 54:8, 57:20, 99:14, 138:16, 152:16, 152:18, 231:7, 231:13, 231:15, 277:5, 298:2, 298:6, 298:19, 302:10, 302:16,
<b>mean</b>	19:2, 19:20, 21:2, 23:12, 27:7, 27:19, 28:2, 28:17, 34:20, 45:10, 59:18, 62:4, 64:6, 65:7, 87:10, 104:16,	380:13, 380:19, 386:11	333:19, 337:13, 346:10, 346:11, 355:15, 355:17, 356:17, 356:18, 357:8, 357:14, 368:4, 368:16, 368:22, 370:5, 372:19, 386:14, 386:16, 387:1, 387:16, 390:3, 390:16, 391:16, 391:18, 404:19, 406:5, 406:9, 406:18, 407:8,
<b>meant</b>	16:20, 124:15, 124:19, 240:20, 373:12	<b>means</b>	
<b>meant</b>	21:10, 28:3, 88:10, 148:7, 166:2, 228:16, 377:7, 419:14	220:15, 222:6, 222:8	<b>meow</b>
<b>meet</b>	148:12, 173:20, 313:16	<b>messages</b>	
<b>meet</b>	34:7, 165:9, 179:14, 227:10,	401:21	<b>met</b>
		144:1, 309:2	144:1, 309:2
		275:12, 276:6	<b>method</b>
		58:11	275:12, 276:6
		<b>michael</b>	<b>metric</b>
		9:5	58:11

CONTAINS CONFIDENTIAL PORTIONS  
12431

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

153

407:15, 431:12, 431:16, 431:20, 432:14, 433:15, 434:2, 434:5, 434:9, 434:13, 435:7, 435:13, 436:10, 437:22, 438:15, 439:7, 439:11, 440:9, 440:20, 441:12 <b>millions</b> 272:6, 392:5, 412:12, 438:7, 438:8 <b>mind</b> 33:17, 258:18, 326:7, 383:3 <b>mine</b> 161:1, 286:19, 315:19 <b>minute</b> 27:12, 33:16, 35:5, 95:21, 150:12, 225:3, 395:7, 409:11 <b>minutes</b> 54:2, 147:22, 156:11, 184:16, 184:17, 191:15, 234:17, 234:19, 256:14, 321:9, 323:5, 393:13, 395:6, 398:3 <b>miscommunication</b> 354:4 <b>misrepresent</b> 358:7 <b>miss</b> 210:13 <b>missed</b> 166:22, 181:8 <b>misses</b> 354:17 <b>missing</b> 16:6 <b>misstate</b> 40:14, 42:13 <b>misstated</b> 61:22	<b>misstates</b> 345:15, 345:16 <b>misstating</b> 62:7 <b>mistake</b> 179:17, 209:20, 351:6 <b>misunderstand</b> 404:7 <b>misunderstanding</b> 41:19, 52:10, 131:9, 313:11 <b>misunderstandings</b> 52:11 <b>mitigate</b> 209:3, 392:9 <b>mitigated</b> 122:18, 124:9, 124:15, 208:7, 208:20, 326:17 <b>mitigation</b> 125:7, 207:19, 208:4, 209:16, 210:20, 234:9, 261:20, 261:21 <b>mixed</b> 58:16, 176:6 <b>mixing</b> 127:3 <b>model</b> 329:21, 330:17, 331:2 <b>modified</b> 275:12, 329:21, 330:16, 359:1 <b>mom</b> 239:12 <b>moment</b> 242:16, 357:9, 398:11 <b>moments</b> 398:9 <b>monday</b> 286:12, 341:16, 341:19, 341:20, 386:21 <b>money</b> 20:1, 82:14,	97:5, 97:14, 102:12, 116:19, 116:22, 117:14, 117:15, 119:12, 119:15, 142:5, 169:11, 169:12, 236:9, 274:20, 327:16, 333:6, 347:18, 360:2, 367:9, 377:9, 378:8, 378:14, 383:22, 405:7, 443:6 <b>monies</b> 376:18 <b>monitor</b> 9:12, 239:16, 242:17, 242:19 <b>monitored</b> 240:1, 240:15, 242:7, 245:6, 245:7, 247:11 <b>monitoring</b> 239:20, 239:21, 240:17, 240:20, 243:6, 243:20, 244:6, 245:1, 248:5, 248:12 <b>month</b> 66:1, 231:7, 308:7, 308:11, 336:7 <b>monthly</b> 5:16, 328:5, 432:16, 432:17, 433:16 <b>months</b> 70:21, 76:3, 77:12, 78:6, 114:14, 115:4, 115:8, 115:16, 179:18, 227:15, 230:13, 245:7, 245:18, 245:19, 245:21, 246:4, 246:5, 388:1 <b>moore</b> 157:1, 158:15,	277:19 <b>moore's</b> 277:16 <b>more</b> 19:8, 45:3, 46:14, 47:4, 49:1, 49:11, 50:22, 53:11, 57:11, 72:8, 78:2, 80:8, 99:20, 107:20, 109:13, 110:13, 116:2, 116:3, 116:17, 118:21, 119:2, 129:18, 146:8, 151:9, 154:1, 160:9, 162:6, 167:5, 169:2, 173:8, 173:16, 178:22, 179:22, 181:14, 181:17, 189:4, 189:7, 194:20, 199:1, 200:4, 203:6, 204:20, 206:18, 211:22, 226:20, 228:7, 229:2, 233:6, 234:20, 234:21, 246:22, 248:17, 249:3, 252:10, 256:15, 256:17, 259:10, 264:9, 271:3, 272:16, 275:1, 299:8, 308:10, 315:10, 317:2, 320:6, 331:6, 369:4, 373:7, 384:21, 385:8, 387:11, 389:15, 389:17, 389:21, 392:1, 394:3, 395:5, 403:10, 437:2, 438:20, 439:9, 439:17, 440:18 <b>morning</b> 11:3, 11:4,
---	--	--	--

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

154

11:7 <b>mortgages</b> 306:15, 335:15	243:4, 247:18, 265:4, 291:14, 305:5, 333:13,	<b>naturalization</b> <b>naturally</b> <b>nature</b> <b>nd</b> <b>multiple</b> <b>multiunit</b> <b>murdering</b>	407:4, 407:5, 411:11, 415:15, 415:20, 420:20 <b>needs</b> 24:20, 28:9, 206:19, 308:10 <b>negative</b> 77:5, 267:13, 302:1 <b>negotiate</b> 400:8, 405:5, 407:5, 435:7, 435:9 <b>negotiated</b> 400:15 <b>negotiations</b> 380:5 <b>neither</b> 303:1, 446:9 <b>nervous</b> 73:7 <b>never</b> 16:5, 23:8, 37:11, 38:1, 38:2, 55:18, 61:7, 102:17, 104:1, 104:7, 105:12, 105:19, 133:19, 144:20, 153:18, 157:15, 177:15, 204:16, 209:11, 209:14, 215:11, 236:20, 238:19, 241:19, 244:10, 250:16, 250:18, 274:1, 301:12, 303:9, 316:11, 316:12, 316:21, 344:14, 346:10, 354:13, 354:14, 355:14, 356:16, 356:17, 357:18, 374:22, 376:16, 428:16, 428:18, 438:4 <b>new</b> 123:20, 128:10, 178:8, 267:1,
	305:14, 335:22, 353:13, 360:2, 374:21, 376:3, 377:9, 382:6, 433:10, 433:20, 437:11, 438:1, 439:9, 439:16, 441:4, 443:9, 444:2		
	52:22, 74:15, 89:18, 140:2, 141:5, 183:17, 195:13, 313:17, 442:7	366:3	
	335:5	<b>near</b>	
<b>motions</b> 261:18	39:10	243:8	
<b>mountain</b> 327:6	<b>must</b> 118:16, 220:4, 222:4, 319:1	<b>necessarily</b> 48:10, 92:22, 129:16, 172:17, 175:6, 258:15, 298:22, 324:14, 349:2	
<b>mouth</b> 299:11		<b>necessary</b> 398:9, 405:15	
<b>move</b> 161:2, 234:13, 271:1, 275:13, 275:15, 276:16, 353:19, 386:17, 386:18	222:12, 237:20, 342:17	<b>need</b> 16:6, 25:11, 26:10, 38:4, 48:4, 53:5, 74:13, 86:5, 87:17, 97:17, 106:19, 113:11, 120:16, 149:19, 150:18, 203:18, 208:17, 235:1, 264:18, 268:11, 269:10, 272:1, 285:13, 298:11, 308:12, 323:1, 337:14, 346:13, 358:12, 358:14, 363:5, 384:19, 388:8, 388:10, 393:13, 394:5, 397:22, 406:7, 407:10, 407:11, 413:17, 416:12, 425:8	
<b>moving</b> 25:13, 106:22, 137:20, 379:14		<b>needed</b> 425:8	
<b>much</b> 18:18, 23:9, 38:20, 91:20, 94:21, 98:22, 100:18, 100:19, 110:13, 110:19, 110:21, 111:1, 111:2, 116:17, 146:8, 173:16, 178:22, 179:22, 191:8, 193:4,	<b>N</b> <b>name</b> 39:19, 39:22, 42:8, 55:18, 55:19, 73:11, 75:15, 122:10, 198:20		
	<b>named</b> 122:8		
	<b>names</b> 165:19, 217:1, 416:8, 417:3, 417:5		
	<b>narrative</b> 74:17, 74:19, 89:19		
	<b>nasty</b> 237:19		
	<b>national</b> 106:4		

CONTAINS CONFIDENTIAL PORTIONS  
12433

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

155

275:6, 283:16, 308:2, 366:1, 370:4, 370:7, 372:4, 372:15, 372:18, 373:12, 387:19, 388:1, 389:1, 404:9, 404:15 <b>news</b> 329:16, 329:19 <b>next</b> 49:12, 75:14, 75:18, 77:21, 78:3, 184:2, 190:21, 191:2, 218:11, 292:18, 341:22, 387:12 <b>nexus's</b> 429:14 <b>nice</b> 290:22, 395:14, 395:17, 397:18 <b>nine</b> 27:13, 185:22, 186:8, 186:9, 186:13, 186:19, 190:17, 191:5, 191:10, 192:11, 261:10, 263:21 <b>nobody</b> 30:12, 142:22 <b>non-rli</b> 122:16 <b>none</b> 134:3, 141:14, 173:19, 180:21, 355:12 <b>nonsensible</b> 84:1 <b>nontimely</b> 63:16 <b>normal</b> 49:4, 49:9, 57:5, 361:13, 365:9, 365:20 <b>normally</b> 297:3 <b>nos</b> 5:20, 6:5,	6:19, 8:7, 8:13 <b>notarial</b> 446:14 <b>notary</b> 2:15, 446:1, 446:21 <b>note</b> 251:6, 320:10, 335:8, 335:10, 345:21, 360:18, 374:3, 419:22, 425:11 <b>notebooks</b> 46:22, 99:4 <b>notes</b> 402:4 <b>nothing</b> 10:18, 18:9, 95:18, 116:8, 124:17, 193:21, 300:12, 371:1, 386:15, 443:21 <b>notices</b> 12:13, 45:8, 45:10, 45:14, 46:3, 46:17, 46:18, 47:5, 48:14, 53:1, 61:4, 71:8, 72:1, 91:5, 147:18, 148:15, 154:8, 155:17, 156:7, 161:13, 161:21, 162:15, 165:13, 166:11, 166:14, 166:20, 168:18, 210:7, 244:10, 345:2, 345:4, 347:21, 352:15, 362:2, 415:22, 416:2, 416:4, 416:5, 416:6, 416:13, 416:21 <b>noticing</b> 384:5 <b>notification</b> 384:3	<b>notoriously</b> 76:7 <b>november</b> 6:12, 69:12, 158:11, 249:13, 276:21, 283:21, 286:12, 287:4, 289:3, 366:16, 367:5, 367:14, 367:20, 368:13, 369:22, 372:1, 372:10 <b>nta</b> 187:21, 189:11 <b>ntas</b> 188:3 <b>number</b> 15:1, 15:3, 16:2, 16:5, 16:8, 16:19, 18:8, 27:8, 34:6, 44:4, 44:17, 45:14, 46:11, 46:19, 47:15, 49:9, 51:17, 92:7, 93:4, 93:20, 93:22, 94:2, 94:6, 94:8, 94:14, 94:16, 94:17, 94:19, 95:1, 95:2, 95:10, 95:15, 96:5, 96:15, 96:19, 99:7, 108:20, 113:19, 115:14, 147:14, 148:7, 148:13, 151:1, 154:4, 156:21, 157:2, 157:22, 158:20, 159:19, 171:8, 171:14, 171:15, 172:3, 173:7, 183:9, 184:3, 184:6, 184:11, 185:6, 186:2, 189:8, 189:10,	189:18, 190:6, 190:7, 204:19, 226:7, 227:16, 228:7, 229:4, 229:6, 240:11, 264:16, 264:17, 277:11, 286:6, 300:20, 310:7, 312:21, 333:9, 336:2, 364:13, 382:9, 398:9, 402:11, 407:12 <b>number's</b> 298:9 <b>numbers</b> 48:3, 48:4, 48:9, 93:7, 93:12, 95:11, 113:15, 113:17, 113:18, 114:6, 115:21, 116:2, 116:4, 148:4, 153:4, 153:15, 157:8, 171:18, 191:7, 192:19, 262:16, 301:6, 302:16, 310:19, 310:20, 417:8, 441:13, 441:15 <b>numeral</b> 320:13 <b>numerator</b> 113:6 <b>numerous</b> 158:14, 158:15 <b>nw</b> 4:11
--	---	--	--

---

**O**

---

**oath**

226:15

**object**32:1, 83:10,  
113:7, 118:15,  
172:6, 419:21**objection**18:2, 20:22,  
22:7, 22:9,

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

156

22:21, 24:1, 25:18, 30:18, 30:19, 31:19, 32:16, 35:6, 36:3, 36:20, 47:6, 47:8, 51:16, 57:13, 57:15, 61:18, 61:21, 75:2, 81:8, 81:22, 82:2, 95:6, 106:8, 107:5, 111:8, 136:13, 144:17, 145:8, 155:19, 162:1, 162:8, 162:17, 165:15, 172:4, 297:1, 300:3, 301:10, 304:18, 353:4, 356:7, 367:17, 377:17, 398:15, 399:15, 399:17, 399:18, 399:19, 400:1, 408:13 <b>obligated</b> 238:4, 238:6 <b>obligates</b> 22:4 <b>obligation</b> 21:16, 21:19, 23:16, 23:18, 25:15, 26:3, 27:22, 28:4, 28:5, 28:7, 28:8, 28:11, 29:22, 30:1, 30:2, 30:3, 30:7, 30:16, 32:20, 32:22, 33:1, 34:21, 35:1, 35:19, 35:22, 124:10, 133:4, 136:6, 140:22, 141:2, 141:4, 141:5, 144:13, 308:20 <b>obligations</b> 22:5, 24:3,	24:16, 32:15, 141:6, 165:9, 211:5, 227:11, 231:10, 239:11, 239:14, 308:15, 336:20 <b>obligor</b> 36:14, 73:20, 124:18, 131:14, 131:20, 131:22, 132:2, 133:3, 135:2, 135:4, 135:5, 135:17, 137:15, 139:20, 175:15, 175:16 <b>obligor's</b> 139:14 <b>obligors</b> 133:1, 180:6, 236:4 <b>obstructionist</b> 442:4 <b>obtain</b> 207:19 <b>obvious</b> 220:13, 236:21, 316:20, 398:10, 411:6 <b>obviously</b> 110:17, 110:20, 146:7, 174:7, 178:12, 178:13, 189:10, 204:8, 241:21, 282:9, 302:18, 365:11, 373:11, 373:13, 425:11 <b>occasions</b> 193:13, 194:10, 197:1 <b>occur</b> 314:20 <b>occurred</b> 313:22, 314:22, 315:2, 353:9, 373:14 <b>occurs</b> 64:14, 176:3,	196:19, 213:4 <b>october</b> 69:11, 217:9, 218:9, 366:15, 367:4 <b>odd</b> 308:7 <b>offended</b> 41:11, 69:1, 237:13, 237:19, 358:8 <b>offenders</b> 243:6 <b>offensive</b> 40:15, 40:19, 40:20, 41:9 <b>offer</b> 376:1, 376:3, 380:4 <b>offered</b> 378:15, 380:2, 380:14, 380:22, 395:14, 432:4, 432:19 <b>offering</b> 418:20 <b>office</b> 45:22, 133:11, 133:17, 141:10, 174:17, 179:18, 196:6, 196:7, 231:21, 242:21, 329:18, 426:3 <b>officer</b> 33:21, 34:8, 69:22, 102:4, 102:6, 122:17, 125:11, 128:20, 129:2, 137:6, 175:15, 176:14, 195:1, 196:16, 208:15, 208:19, 210:17, 324:9, 446:3 <b>officers</b> 176:17, 182:5 <b>offices</b> 2:2, 335:3,	361:19, 426:3, 427:11, 429:14, 429:20, 430:7 <b>offset</b> 222:22, 299:2 <b>often</b> 16:18, 72:9, 76:15, 177:6, 228:8 <b>oh</b> 37:19, 58:13, 69:3, 71:14, 100:6, 119:22, 208:8, 255:11, 322:8, 331:15, 351:13, 364:16, 366:8, 393:3, 409:7, 430:13, 431:22, 443:13 <b>old</b> 7:5, 7:8, 283:15, 292:15, 292:18, 330:17, 404:2, 404:3 <b>once</b> 35:16, 65:21, 65:22, 66:3, 66:14, 69:21, 132:19, 132:21, 138:8, 189:5, 192:9, 213:3, 235:3, 253:11, 266:14, 278:14, 299:1, 300:16, 303:5, 410:20, 432:10 <b>one-off</b> 66:9, 67:3, 76:13, 162:3 <b>onerous</b> 246:7, 413:6 <b>ones</b> 69:7, 80:6, 84:21, 93:16, 159:14, 198:13, 346:5, 380:13 <b>ongoing</b> 28:19, 123:14,
--	---	---	--

CONTAINS CONFIDENTIAL PORTIONS  
12435

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

157

271:15, 345:9, 405:19 <b>only</b> 21:19, 23:14, 31:8, 34:11, 36:15, 37:14, 38:18, 38:19, 50:4, 50:16, 76:5, 87:7, 100:17, 106:15, 109:9, 110:5, 112:6, 119:15, 129:3, 143:22, 184:16, 198:2, 198:8, 203:4, 203:12, 206:4, 218:20, 245:18, 245:21, 246:3, 257:13, 259:16, 282:15, 301:5, 307:9, 307:10, 335:9, 343:21, 368:1, 394:7, 402:5, 404:11, 417:11, 420:10, 423:10, 442:22 <b>open</b> 19:19, 19:21 <b>open-ended</b> 119:9 <b>opened</b> 24:9, 267:2 <b>opening</b> 273:15 <b>opens</b> 269:5 <b>operate</b> 331:4, 401:22 <b>operated</b> 207:10, 278:8, 278:22, 279:18, 280:20, 281:6 <b>operating</b> 271:12, 277:21, 280:6, 284:22, 285:11, 335:4 <b>operation</b> 327:21, 335:5	<b>opinion</b> 60:20, 111:13 <b>opportunities</b> 59:9, 62:22, 63:6, 230:4 <b>opportunity</b> 27:6, 90:12, 90:13, 122:15, 134:16, 147:10, 197:9, 197:10, 254:15, 257:8, 257:11, 260:11, 298:15, 323:16, 398:21, 405:20, 431:8, 432:6 <b>opposite</b> 312:18 <b>option</b> 73:22, 129:3, 387:18 <b>orange</b> 88:10 <b>order</b> 13:13, 50:7, 52:14, 90:1, 90:4, 102:5, 104:3, 121:9, 128:15, 130:8, 167:3, 209:2, 214:20, 224:22, 225:1, 225:5, 225:12, 225:16, 264:8, 267:17, 268:21, 269:2, 272:4, 272:8, 272:16, 272:18, 273:15, 274:17, 276:6, 276:8, 295:18, 299:16, 299:17, 301:14, 329:14, 330:14, 334:19, 338:1, 352:7, 384:5, 384:10, 384:17, 384:22, 431:19, 435:12 <b>ordered</b> 84:18, 289:9	<b>orders</b> 224:2 <b>organization</b> 419:3 <b>originally</b> 272:20, 359:1 <b>other</b> 14:2, 15:15, 48:15, 51:4, 61:6, 92:14, 95:12, 96:20, 101:18, 109:17, 109:21, 110:2, 110:8, 110:19, 113:20, 114:2, 114:6, 115:12, 122:22, 142:6, 150:4, 168:16, 168:18, 182:2, 188:7, 191:13, 192:7, 198:10, 198:13, 211:19, 222:19, 226:8, 234:4, 236:5, 244:2, 244:12, 249:16, 249:21, 253:21, 263:3, 263:16, 263:17, 264:4, 264:5, 264:9, 264:12, 264:19, 264:21, 291:9, 306:12, 307:5, 312:9, 312:13, 312:20, 315:9, 327:21, 330:5, 333:8, 334:15, 335:16, 340:13, 343:21, 380:9, 380:12, 380:17, 380:21, 381:2, 381:8, 381:10, 381:11, 381:18, 400:15, 402:8, 404:12, 416:6, 422:5, 432:21, 433:4, 437:6, 438:12, 443:15, 443:17	<b>others</b> 6:8, 6:11, 6:18, 8:6, 38:14, 110:16, 181:7, 191:6, 264:1 <b>otherwise</b> 49:22, 59:5, 59:9, 100:17, 103:22, 143:19, 198:9, 198:10, 198:15, 291:8, 335:13, 446:11 <b>out</b> 25:7, 26:8, 42:6, 45:10, 53:8, 53:22, 65:11, 65:13, 70:9, 77:5, 88:10, 88:13, 92:12, 93:19, 94:9, 102:21, 115:15, 126:17, 129:5, 133:10, 133:21, 138:11, 146:1, 150:13, 182:20, 206:18, 228:17, 234:11, 237:18, 246:17, 247:20, 247:22, 262:1, 272:19, 275:2, 288:16, 288:17, 293:11, 293:15, 309:1, 319:7, 329:17, 332:5, 334:1, 353:18, 366:21, 382:18, 386:6, 403:17, 405:20, 413:19, 438:7, 442:8, 443:4 <b>outcome</b> 446:12 <b>outlined</b> 177:1 <b>outside</b> 64:18 <b>outstanding</b> 16:12, 19:9,
---	--	--	--

CONTAINS CONFIDENTIAL PORTIONS

12436

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

158

19:13, 85:8, 87:17, 105:5, 105:6, 149:8, 149:10, 150:2, 150:4, 150:5, 150:8, 151:2, 151:20, 152:8, 171:12, 171:15, 173:8, 214:15, 246:18, 331:21, 332:1, 332:19, 334:4, 334:10, 335:7, 335:15, 335:19, 337:1, 337:8, 433:7 <b>over</b> 17:16, 21:11, 36:19, 37:16, 55:15, 61:12, 65:18, 103:20, 128:8, 133:17, 155:2, 166:11, 195:13, 228:2, 231:7, 231:13, 231:15, 248:18, 259:1, 266:15, 275:1, 282:6, 298:19, 308:6, 319:18, 347:8, 366:19, 389:19, 442:8 <b>overall</b> 183:15 <b>overlap</b> 14:10 <b>oversaw</b> 179:16 <b>owe</b> 184:2, 236:6, 256:10 <b>owed</b> 348:18, 375:7, 375:9 <b>owes</b> 20:1, 335:15 <b>own</b> 26:8, 31:4, 62:3, 117:10,	157:13, 206:6, 222:13, 222:15, 238:8, 395:16, 433:4 <b>owned</b> 306:5 <b>owns</b> 222:16 <hr/> <b>P</b> <b>p&amp;l</b> 13:11, 293:11, 293:15 <b>p&amp;ls</b> 13:13 <b>packet</b> 362:1 <b>page</b> 5:2, 5:9, 16:6, 69:4, 75:22, 77:21, 78:3, 78:4, 85:16, 138:6, 174:10, 217:6, 217:10, 217:18, 217:22, 218:11, 258:6, 286:11, 286:14, 286:17, 297:22, 364:13, 426:9 <b>pages</b> 1:21, 15:22, 272:6, 343:21 <b>paint</b> 442:3 <b>paper</b> 71:2, 315:20 <b>paperwork</b> 188:7, 363:7 <b>paragraph</b> 37:12, 235:8, 250:15, 258:6, 324:21, 339:5, 345:21, 363:18, 364:19, 364:21, 366:11, 372:20, 425:22, 429:22 <b>parking</b> 335:13	<b>part</b> 25:21, 26:2, 28:17, 51:3, 52:9, 56:21, 80:22, 146:4, 187:9, 188:22, 189:9, 221:8, 241:8, 244:20, 269:4, 327:3, 363:1, 372:12, 384:1, 405:4 <b>partially</b> 234:8 <b>participant</b> 15:12, 245:7, 251:16, 255:13, 261:14, 402:19, 407:1, 433:17, 433:19, 433:22 <b>participants</b> 14:17, 15:2, 15:4, 15:7, 16:2, 16:13, 17:5, 17:10, 81:14, 195:12, 227:8, 328:8, 328:12, 328:17, 328:20, 384:14, 385:6, 400:7, 401:15, 401:17, 401:20, 402:2, 403:19, 404:15, 405:13, 405:16, 406:14, 406:15, 407:5, 411:8, 413:16, 416:1, 422:4 <b>particular</b> 41:13, 157:18, 182:3 <b>particularly</b> 267:12 <b>parties</b> 306:13, 446:10 <b>partner</b> 356:19, 357:2, 357:7, 357:10, 370:7	<b>parts</b> 297:7 <b>party</b> 203:3, 204:6 <b>pass</b> 91:22 <b>past</b> 5:13, 5:15, 87:5, 137:20, 325:9, 337:11, 345:4, 345:8 <b>patience</b> 183:18 <b>paul</b> 1:14, 2:1, 10:16, 445:2 <b>pause</b> 393:7 <b>payable</b> 212:12, 213:19, 214:8, 217:8, 218:16, 219:11, 219:19, 220:21, 221:11, 221:15, 221:17, 298:18 <b>paying</b> 19:7, 50:7, 66:5, 74:10, 97:14, 121:16, 140:14, 140:19, 143:14, 143:15, 229:3, 229:13, 230:1, 230:9, 231:9, 250:14, 252:20, 252:21, 253:8, 378:22 <b>payment</b> 18:22, 50:14, 70:21, 78:6, 86:21, 90:3, 124:10, 127:6, 140:9, 140:10, 142:20, 193:8, 197:4, 212:12, 217:6, 217:10, 218:14, 219:9, 227:12, 227:19, 227:20, 229:11,
---	--	--	--

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

159

231:13, 239:11, 251:4, 255:1, 255:15, 255:19, 261:15, 264:7, 265:6, 265:7, 266:10, 266:19, 266:21, 268:14, 269:21, 270:4, 300:20, 308:5, 329:11, 359:12, 359:19, 360:5, 373:18, 374:15, 375:17, 379:4, 379:9 <b>payments</b> 5:13, 69:11, 78:17, 80:3, 83:16, 87:2, 99:6, 99:9, 224:5, 224:6, 225:7, 227:14, 228:2, 230:10, 231:14, 231:16, 328:7, 328:11, 328:19, 329:8, 356:15, 360:11, 376:14, 433:17, 433:19 <b>payroll</b> 302:4, 302:5, 302:6, 302:15, 302:18, 334:21 <b>pays</b> 20:12, 123:13, 238:14 <b>peachtree</b> 3:14 <b>pecuniary</b> 406:9 <b>penal</b> 22:16, 23:3, 26:1, 44:20, 54:5, 92:17, 99:14, 105:5, 122:20, 123:13, 140:11, 144:3, 238:14, 240:9 <b>penalties</b> 146:6, 219:10	<b>penalty</b> 123:13 <b>pending</b> 145:15, 369:8, 384:3 <b>people</b> 15:13, 15:16, 15:18, 30:11, 33:13, 33:14, 33:15, 33:19, 38:22, 40:22, 41:2, 96:21, 97:11, 98:2, 133:21, 134:4, 156:21, 227:10, 229:5, 230:4, 230:6, 243:8, 245:5, 246:1, 246:11, 248:14, 248:17, 248:22, 249:2, 252:11, 261:22, 262:1, 264:12, 264:19, 290:16, 308:11, 308:12, 335:4, 355:6, 364:6, 390:15, 402:1, 402:11, 403:3, 403:6, 405:8, 405:20, 413:9, 422:7, 422:19, 423:5, 424:5 <b>people's</b> 81:17, 254:7 <b>perceived</b> 81:15 <b>percent</b> 56:5, 58:8, 59:3, 91:17, 94:11, 96:4, 97:13, 99:19, 106:6, 107:3, 107:16, 108:11, 109:19, 114:15, 115:6, 115:11, 115:17, 119:19, 124:16, 125:7, 125:8, 208:4, 146:6, 219:10	208:5, 231:2, 236:13, 268:4, 268:10, 291:15, 294:19, 329:8, 392:4, 413:20, 437:1, 437:2 <b>percentage</b> 34:12, 108:15, 108:16, 113:19 <b>perdomo</b> 157:1, 158:14 <b>pereira</b> 186:11, 187:7, 187:8, 187:17, 187:22, 188:1, 188:4, 188:21, 189:3, 189:7, 189:16, 190:6, 190:7, 191:21, 260:19, 261:1, 262:19, 263:6, 263:9, 263:22 <b>perform</b> 22:4, 61:11, 66:12 <b>performance</b> 47:22, 271:22, 272:2, 329:8, 337:12, 437:10 <b>perhaps</b> 38:11, 42:5, 91:21, 148:12, 185:21, 186:12, 202:13, 203:13, 213:11, 290:22 <b>period</b> 19:3, 55:15, 58:22, 226:22, 243:3, 246:6, 248:3, 347:8, 347:10, 349:11, 349:12, 349:14, 354:18, 368:3, 388:18 <b>periods</b> 13:14 <b>permission</b> 102:8, 102:9,	125:13, 125:14, 125:15, 125:16, 176:21, 194:18, 194:22, 316:13 <b>permit</b> 127:22 <b>permitted</b> 227:18, 383:19 <b>person</b> 19:22, 27:3, 29:14, 34:7, 38:10, 38:12, 39:4, 40:7, 42:9, 58:15, 68:11, 101:13, 101:17, 101:20, 123:3, 123:10, 125:8, 128:7, 128:19, 129:7, 131:4, 133:10, 145:6, 178:8, 178:20, 179:9, 208:21, 209:17, 210:13, 222:12, 228:9, 234:5, 237:16, 243:1, 244:11, 244:22, 246:6, 246:10, 247:20, 251:14, 265:4, 324:10, 325:2, 326:10, 326:16 <b>person's</b> 59:4, 59:9, 123:19, 129:5, 129:7, 133:14, 209:21, 270:14 <b>personal</b> 25:2, 25:4, 25:10, 31:8, 112:7, 112:10, 134:7, 134:9, 252:9, 279:7, 359:15, 404:13, 417:4, 417:6 <b>personally</b> 66:12, 342:18, 350:15
--	---	--	---

CONTAINS CONFIDENTIAL PORTIONS

12438

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

160

<b>personnel</b>	9:21, 11:1, 111:13, 344:9, 344:21, 365:10	<b>point</b>	<b>position</b>
<b>perspective</b>	88:16	24:22, 26:12, 77:20, 113:6, 115:21, 129:4,	20:16, 77:5, 106:20, 118:11, 415:14
<b>peters</b>	<b>plan</b>	137:9, 138:11, 144:3, 144:12, 158:5, 213:6,	<b>possibility</b>
<b>philadelphia</b>	275:14, 275:15, 292:8, 373:16, 429:13	214:14, 233:4, 237:18, 239:17, 240:21, 242:13,	59:4
<b>phone</b>	<b>planet</b>	243:2, 245:9, 245:10, 249:15, 251:17, 258:16,	<b>possible</b>
<b>pick</b>	<b>planned</b>	271:19, 283:18, 295:11, 301:5, 309:12, 310:11,	51:9, 80:14, 175:21, 175:22,
<b>picture</b>	<b>planning</b>	315:9, 317:10, 319:7, 321:3, 352:12, 359:20,	176:2, 209:4, 230:4, 257:22,
<b>piece</b>	<b>plans</b>	364:12, 371:9, 374:8, 386:6, 413:16, 417:20,	258:20, 369:5
<b>piispanen</b>	<b>please</b>	430:5, 442:8, <b>pointed</b>	<b>possibly</b>
<b>piispanen's</b>	9:16, 10:14, 19:15, 33:17, 35:7, 40:13, 42:13, 84:22, 85:22, 117:6, 117:18, 117:20, 118:4, 118:7, 145:9, 161:4, 162:19, 166:7, 168:5, 168:7, 292:10, 293:21, 315:15, 315:20, 321:16, 345:21, 352:8, 366:22, 368:11, 397:10, 399:1, 409:11, 417:19, 419:15, 431:11, 432:12	413:19 <b>pointing</b>	52:13, 226:19, 253:21
<b>placed</b>	<b>pledged</b>	413:19 <b>points</b>	<b>post</b>
<b>plaintiff</b>	146:18 <b>plenty</b>	31:3, 245:10, 387:8, 442:8	128:9, 236:13, 236:15, 237:2, 238:3, 238:8, 238:9, 238:12, 355:15, 370:5, 372:19, 375:2, 377:2, 378:3, 383:21, 388:17, 406:4
1:6, 3:2, 9:19,	395:9 <b>plus</b>	<b>police</b>	<b>post-invoice</b>
	93:18, 246:18, 337:13	38:3 <b>policy</b>	196:22, 197:2, 197:5, 197:17, 197:21, 198:10, 206:2
	<b>pocket</b>	38:8, 38:15, 42:16, 65:21, 111:17, 111:18, 111:20, 112:18, 112:19, 245:17, 245:20, 245:21, 254:18, 257:21	<b>posted</b>
	332:5	<b>polite</b>	37:6, 128:18, 132:10, 135:9, 236:7, 370:13, 370:14, 378:11, 378:14, 382:3, 382:7
		<b>portion</b>	<b>posting</b>
		377:12, 404:7	368:18, 368:20, 370:20, 371:2, 371:3, 372:14
		<b>portions</b>	<b>posts</b>
		1:15, 257:7, 387:6	238:13
			<b>potential</b>
			20:3, 21:12, 116:12, 116:20, 391:1, 392:6
			<b>potentially</b>
			384:15, 413:15

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CONTAINS CONFIDENTIAL PORTIONS

12430

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

161

<b>practice</b> 244:20	<b>present</b> 4:16, 10:6, 14:22, 309:1, 338:21, 427:11, 439:10	239:18, 240:14, 242:5, 242:11, 264:6 <b>principal's</b> 235:10, 235:22	<b>problem</b> 158:6, 159:12, 244:8, 274:19, 322:16, 329:19, 331:16, 353:12, 353:13, 363:2, 368:1, 388:8 <b>problematic</b> 252:7
<b>pre</b> 177:18, 206:1, 383:20	<b>presented</b> 56:9, 67:14, 67:22, 71:19, 88:16, 89:5, 89:8, 89:11, 285:5, 287:2, 412:5	121:18, 122:2, 122:5, 240:3, 242:6, 242:22, 243:20, 244:5, 246:14, 248:5, 248:12, 441:5	<b>problems</b> 27:18, 275:7 <b>procedure</b> 177:1, 177:8, 177:9
<b>pre-invoice</b> 177:18, 179:7, 196:20, 197:11, 199:6, 204:13, 205:4, 205:18, 206:4, 206:14, 207:19, 209:11, 209:15, 311:11, 312:16, 314:18, 383:21	<b>presently</b> 305:6, 308:3	<b>print</b> 290:16	<b>procedures</b> 146:22, 361:20 <b>proceed</b> 12:20, 12:21, 59:10, 321:15, 426:20
<b>precedent</b> 179:3	<b>president</b> 18:15, 25:9, 78:15, 112:11	<b>printable</b> 291:15	<b>proceeding</b> 266:17, 268:14, 268:18
<b>precise</b> 389:5, 413:2	<b>presumably</b> 26:19, 152:22	<b>prior</b> 13:13, 42:18, 69:15, 70:16,	<b>proceedings</b> 122:22, 123:14, 123:22, 124:1, 124:4, 180:7, 196:3, 255:22, 256:1, 265:19, 266:18, 266:20, 267:4, 267:5, 267:15, 268:21, 269:13, 270:15
<b>preclude</b> 26:19	<b>presume</b> 68:12, 119:14	78:6, 86:17, 147:12, 173:6, 190:4, 310:1, 316:15, 341:17,	<b>process</b> 18:17, 21:21, 27:2, 33:14, 50:6, 59:22,
<b>precluded</b> 268:17, 269:21	<b>presumed</b> 376:20	355:16, 361:5, 361:8, 363:14, 367:12, 367:19,	60:3, 60:12, 61:7, 63:15, 64:3, 64:11,
<b>prefer</b> 372:18, 393:8	<b>pretend</b> 81:12	374:14, 410:17, 411:4, 411:15, 412:14, 412:16, 413:3, 413:6, 413:11, 413:12, 420:16, 421:8	65:1, 65:20, 66:3, 134:16, 134:17, 176:4, 176:17, 203:2, 208:9, 213:10, 235:15, 271:13, 271:15, 272:11, 274:19, 277:13,
<b>prel</b> 189:17	<b>pretenses</b> 169:13	<b>privacy</b> 404:11	
<b>preliminary</b> 166:3, 214:19, 224:22, 225:2, 225:5, 225:8, 249:12, 272:22, 283:22	<b>pretty</b> 23:6, 70:6, 135:1, 208:16, 209:19, 234:10, 285:16, 413:1	<b>privilege</b> 155:22, 314:9, 420:8, 425:15	
<b>premium</b> 350:1	<b>prevent</b> 193:22, 194:11	<b>privileged</b> 155:21, 425:14	
<b>prep</b> 57:14	<b>prevented</b> 193:14, 194:6, 197:1, 197:19, 198:11	<b>probably</b> 70:6, 103:16, 111:3, 138:10, 150:20, 175:7, 182:22, 191:8, 229:2, 231:13, 269:14, 301:1, 302:2, 302:18, 389:20	
<b>preparation</b> 259:12	<b>preview</b> 257:17		
<b>prepared</b> 53:17, 54:16, 54:17, 55:21, 57:7, 57:19, 148:1, 161:8, 319:2, 374:5, 396:3, 396:5, 396:11	<b>previous</b> 296:7		
<b>preparing</b> 273:7, 275:11	<b>previously</b> 41:7		
	<b>principal</b> 32:22, 36:18, 37:4, 37:16, 130:20, 233:10,		

CONTAINS CONFIDENTIAL PORTIONS

12440

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

162

278:3, 288:6, 290:3, 290:13, 295:21, 311:18, 316:4, 331:7, 355:14, 361:20 <b>processes</b> 271:17, 331:5 <b>produce</b> 15:21, 102:20, 157:19, 166:15, 169:5, 199:18, 200:20, 206:17, 206:21, 211:10, 211:15, 211:16, 215:16, 263:5, 263:6, 289:8, 289:20, 290:4, 300:18, 324:9, 332:4, 418:17 <b>produced</b> 13:6, 153:14, 153:15, 157:9, 157:11, 158:1, 160:12, 164:1, 207:16, 209:17, 215:20, 246:13, 262:21, 264:17, 272:6, 287:20, 287:21, 291:3, 292:16, 293:12, 297:15, 312:11, 312:19, 312:21, 317:2, 317:9, 321:10 <b>produces</b> 215:18 <b>producible</b> 291:14 <b>producing</b> 45:20, 54:13, 55:4, 99:4, 282:7, 290:18 <b>production</b> 13:2, 100:22, 157:13, 157:21, 161:10, 163:9, 169:6, 170:16, 199:19, 215:9,	271:17, 293:13, 300:10, 312:21, 315:13, 317:4, 317:6, 384:8, 392:14 <b>productions</b> 271:16, 290:21 <b>professional</b> 2:14, 68:10, 353:15 <b>professionals</b> 227:7, 274:17, 353:11, 353:19 <b>profit</b> 7:3, 7:5, 7:8, 271:12, 277:21, 278:9, 279:1, 279:18, 279:22, 280:6, 280:20, 281:7, 285:1, 285:11, 287:6, 287:14, 288:1, 290:6, 292:1, 293:18, 294:8, 296:4, 296:12, 297:14, 297:18, 298:1, 301:7, 303:2 <b>program</b> 13:21, 14:11, 14:15, 14:17, 14:18, 14:19, 15:1, 15:3, 15:7, 15:11, 16:2, 16:12, 16:17, 17:5, 38:21, 44:2, 46:3, 81:14, 95:19, 96:1, 96:3, 105:20, 115:16, 185:16, 185:17, 195:11, 223:1, 227:8, 240:7, 241:6, 241:9, 241:11, 245:6, 248:13, 249:2, 251:16, 308:5, 328:7,	328:12, 328:17, 328:20, 340:14, 355:6, 355:11, 356:6, 356:19, 362:2, 367:10, 371:4, 371:12, 372:4, 372:6, 374:19, 385:6, 389:19, 400:7, 402:18, 403:19, 404:14, 405:13, 405:16, 406:14, 407:1, 407:4, 411:8, 413:15, 416:1, 416:15, 422:4, 433:16, 433:19, 433:22, 436:13 <b>program-wide</b> 437:15 <b>programs</b> 96:12 <b>progress</b> 290:9, 291:3, 372:5 <b>prohibit</b> 37:8 <b>promise</b> 22:18, 303:6 <b>promised</b> 263:20 <b>promises</b> 23:2 <b>promissory</b> 335:8, 335:10 <b>proof</b> 175:12 <b>proper</b> 36:4, 376:6, 399:20, 400:4 <b>properly</b> 295:5 <b>properties</b> 13:12, 293:4, 297:20, 306:14, 306:16, 433:4 <b>property</b> 13:11, 306:5,	306:6, 306:7, 307:3, 433:1 <b>proposed</b> 419:18 <b>proposing</b> 326:3 <b>protect</b> 390:14, 390:16, 410:14, 414:10, 415:15, 415:21, 416:12, 421:17 <b>protected</b> 391:15, 406:15, 411:12 <b>protecting</b> 400:6, 417:17, 441:7 <b>protection</b> 267:14 <b>protections</b> 266:16, 267:3, 267:4, 400:8, 422:1, 431:18 <b>protective</b> 384:10, 384:17, 384:22, 403:16, 435:11 <b>protest</b> 324:16 <b>proud</b> 78:15, 186:1, 223:2, 308:5, 308:7 <b>prove</b> 102:3, 325:12, 439:16, 440:14, 440:16, 441:1 <b>proves</b> 326:18 <b>provide</b> 13:17, 43:10, 72:16, 103:14, 146:17, 155:14, 159:21, 160:21, 165:10, 167:4, 167:16, 180:4, 180:13, 180:17, 181:20, 181:22,
---	---	---	--

CONTAINS CONFIDENTIAL PORTIONS  
12441

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

163

182:5, 182:18, 186:13, 189:20, 191:3, 191:5, 191:7, 191:10, 191:11, 202:8, 205:18, 205:19, 216:1, 217:7, 218:15, 246:9, 265:2, 268:4, 270:11, 271:2, 274:12, 278:15, 282:18, 285:8, 308:9, 310:2, 315:7, 315:22, 319:2, 322:3, 324:5, 324:12, 325:6, 332:6, 351:19, 352:1, 360:5, 378:19, 380:2, 380:4, 380:14, 380:22, 385:4, 391:15, 394:3, 395:11, 404:4, 407:18, 409:3, 412:1, 421:12, 432:4, 443:8 <b>provided</b> 47:9, 48:9, 55:21, 56:1, 67:22, 110:6, 139:19, 158:21, 161:10, 161:14, 161:22, 167:6, 167:8, 167:15, 168:22, 169:18, 169:19, 170:11, 171:2, 171:6, 201:1, 201:9, 202:3, 203:9, 203:12, 204:1, 204:15, 206:5, 211:2, 239:2, 248:19, 253:14, 284:1, 287:12, 288:2, 288:5, 292:2, 293:19, 313:20, 314:17,	315:10, 316:18, 319:13, 319:21, 320:3, 325:4, 325:7, 326:5, 352:14, 371:14, 375:18, 376:22, 381:7, 381:9, 381:10, 381:11, 381:13, 381:19, 384:16, 403:21, 404:4, 404:5, 412:15, 412:17, 413:4, 415:12, 418:10, 418:15, 418:16, 419:17, 420:15, 421:7, 426:8, 426:12 <b>provides</b> 38:16, 135:22, 147:3, 182:4, 231:19, 300:19, 302:14, 302:15, 330:14 <b>providing</b> 12:10, 16:19, 74:5, 157:4, 196:15, 275:20, 309:18, 316:19, 325:19, 338:19, 351:18, 352:6, 361:14, 361:16, 363:10, 432:8 <b>proving</b> 115:21 <b>provision</b> 218:6, 250:6, 335:10, 345:21, 368:16, 370:3, 400:13, 404:11, 407:6 <b>provisions</b> 87:15, 265:16, 384:19, 400:17, 410:14, 437:9 <b>public</b> 2:15, 446:1, 446:21 <b>pull</b> 16:7, 45:8,	102:21, 103:2, 181:11, 183:17, 191:3, 247:2, 270:9, 348:2 <b>pulled</b> 440:17 <b>pulling</b> 45:10, 45:12, 46:22 <b>purpose</b> 133:9, 235:9, 235:21, 236:2, 297:8, 410:10 <b>purposes</b> 271:8, 274:22, 286:21, 299:15, 378:11 <b>pursuant</b> 2:13, 12:12, 23:21, 25:17, 28:13, 35:12, 40:11, 42:21, 43:6, 50:6, 61:11, 65:4, 80:4, 90:1, 90:4, 97:19, 139:14, 197:6, 251:18, 265:18, 273:15, 282:22, 283:15, 293:12, 301:14, 337:14, 338:3, 352:6, 359:12, 361:1, 381:12, 443:7 <b>pursue</b> 127:7 <b>put</b> 48:11, 67:8, 68:17, 86:22, 98:5, 102:3, 109:8, 138:8, 164:20, 166:22, 184:12, 255:7, 262:4, 263:12, 295:10, 295:12, 299:11, 299:12, 300:7, 300:12, 301:15, 303:11,	304:13, 349:15, 392:7, 392:18, 397:20, 398:7, 405:8, 406:16, 420:21, 421:1, 422:10 <b>putting</b> 41:2, 295:8 <b>Q</b> <b>qualification</b> 86:18 <b>qualified</b> 183:22 <b>quantified</b> 395:1 <b>quantify</b> 392:22, 394:10, 438:15, 442:15 <b>quantifying</b> 437:13 <b>quasi</b> 255:22 <b>question's</b> 25:19 <b>questioning</b> 42:17, 147:9 <b>questionnaire</b> 180:4, 180:14, 180:18, 181:20, 181:21, 181:22, 182:13, 182:18, 188:6 <b>questionnaires</b> 182:11 <b>questions</b> 24:22, 25:12, 57:8, 62:4, 73:8, 74:14, 74:15, 74:22, 75:4, 75:11, 85:12, 90:10, 106:21, 118:7, 119:9, 119:13, 134:15, 134:19, 134:20, 147:11, 163:8, 168:8, 168:9, 177:13,
---	---	---	---

CONTAINS CONFIDENTIAL PORTIONS  
12442

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

164

177:14, 191:12, 191:13, 192:8, 201:19, 233:7, 234:1, 255:9, 258:13, 277:10, 285:7, 294:8, 308:14, 356:14, 357:20, 365:21, 396:21, 398:18, 408:11, 424:1, 425:8, 430:12, 430:16, 433:11, 444:4 <b>quick</b> 43:12, 70:6, 172:19, 257:13, 257:15, 311:1, 323:15, 334:7, 343:20, 383:5, 415:5, 425:3 <b>quickbooks</b> 271:15, 272:3, 272:5, 272:9, 272:12, 272:14, 272:19, 273:11, 273:18, 274:3, 277:6, 277:7, 287:22, 289:4, 289:7, 291:16, 295:9, 295:12, 299:15, 301:13, 303:10 <b>quickly</b> 51:9, 430:21 <b>quite</b> 110:14, 129:20, 186:1, 275:16, 305:4, 357:20, 437:4 <b>quote</b> 304:6 <b>quotes</b> 344:1 <b>quoting</b> 219:4	<b>raise</b> 177:8, 177:9, 177:12, 178:21, 179:7, 179:8, 179:9, 179:12, 180:10, 182:13, 223:20 <b>raised</b> 180:6, 180:8, 180:9, 180:11, 182:12, 215:8, 240:6, 311:19, 355:13, 365:22, 411:11, 434:6 <b>range</b> 184:9 <b>rank</b> 334:19 <b>rate</b> 14:1, 17:14, 18:10, 52:20, 94:22, 95:19, 95:21, 96:1, 96:2, 96:18, 97:2, 97:4, 98:13, 99:12, 99:19, 99:20, 102:12, 104:3, 104:4, 104:15, 104:16, 104:17, 104:19, 104:22, 105:3, 105:8, 106:6, 106:10, 107:3, 107:16, 108:1, 108:3, 108:6, 109:2, 109:3, 109:5, 109:10, 109:16, 109:18, 110:2, 110:7, 110:12, 110:14, 111:1, 111:2, 111:5, 111:15, 113:14, 114:4, 114:11, 114:13, 115:5, 115:8, 115:17, 116:9, 116:10, 116:15, 116:16,	119:13, 119:14, 119:16, 119:18, 120:9, 121:15, 247:11, 252:6, 316:7, 326:17, 347:16, 391:20, 392:4, 393:18, 393:19, 393:20, 393:21, 431:13, 431:14, 435:14, 435:17, 435:18, 436:4, 436:21, 437:1, 437:2, 437:11, 437:15, 437:16, 441:4, 441:12, 442:21, 443:1, 443:3 <b>rate's</b> 96:4 <b>rates</b> 110:16, 120:5, 383:22, 397:13, 431:6 <b>rather</b> 84:10, 176:12, 184:11, 225:21, 234:4, 256:11 <b>ratio</b> 113:3 <b>razzled</b> 435:22 <b>rd</b> 70:16 <b>reach</b> 308:14, 402:11 <b>reached</b> 182:3 <b>read</b> 47:14, 73:21, 90:6, 117:19, 136:15, 145:9, 145:10, 179:19, 200:3, 211:12, 256:2, 257:11, 257:15, 258:3, 258:15, 259:9, 259:11, 259:13, 259:17, 259:19,	270:22, 323:14, 323:18, 323:20, 323:21, 338:6, 358:22, 359:1, 364:6, 365:15, 365:17, 415:4, 415:6, 425:3, 441:21, 445:3 <b>readily</b> 186:21 <b>reading</b> 136:14, 218:20, 323:19, 446:8 <b>ready</b> 256:13, 282:21 <b>real</b> 43:12, 113:15, 116:20, 125:9, 184:11, 236:15, 236:16, 254:7, 254:9, 305:15, 305:17, 305:20, 305:21, 305:22, 306:11, 307:6, 310:22, 323:14, 334:7, 335:16, 343:20, 383:5, 383:21, 388:8, 415:5, 425:3, 432:21 <b>realities</b> 18:19 <b>reality</b> 44:9, 97:15, 243:10, 253:6, 308:2, 390:6 <b>realize</b> 161:17, 161:19, 273:18 <b>really</b> 37:1, 94:13, 96:18, 113:9, 114:9, 117:19, 172:19, 183:22, 184:1, 205:1, 208:17, 214:21, 215:13, 221:20, 222:15, 227:4,
<hr/> <b>R</b> <hr/> <b>raid</b> 413:14			

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

165

237:19, 297:7, 308:12, 340:1, 366:20, 379:20, 412:18, 425:6 <b>realtime</b> 2:15 <b>reapply</b> 265:13 <b>rearrested</b> 267:1 <b>reason</b> 48:8, 48:15, 68:14, 68:16, 68:18, 70:2, 86:14, 87:4, 87:21, 88:12, 89:7, 90:14, 90:19, 91:10, 110:5, 142:16, 153:19, 188:10, 234:4, 248:17, 283:5, 284:7, 293:14, 297:8, 301:17, 437:12 <b>reasonable</b> 354:12, 354:21, 356:21, 357:1, 357:11 <b>reasoning</b> 194:22 <b>reasons</b> 39:1, 186:14, 191:6, 191:11, 223:2, 229:6, 236:21 <b>reassert</b> 268:20, 338:5 <b>rebonded</b> 253:13 <b>recall</b> 40:5, 153:7, 249:12, 249:14, 249:18, 310:1, 310:7, 313:19, 339:12, 340:12, 341:3, 342:14, 343:17, 366:13, 372:9, 409:22	<b>receipt</b> 212:13, 212:14, 213:19, 214:8, 214:13, 216:13, 217:8, 218:16, 219:12, 219:20, 220:18, 220:21, 221:11, 221:15, 223:8, 231:22, 325:1 <b>receivable</b> 307:21, 307:22, 309:6, 309:10, 310:8 <b>receivables</b> 257:7 <b>receive</b> 34:12, 36:15, 38:9, 91:21, 164:14, 165:12, 166:13, 223:5, 244:21, 255:4, 275:4, 345:22, 376:16, 419:8 <b>received</b> 46:17, 48:14, 52:2, 52:3, 52:5, 53:2, 55:1, 60:21, 61:1, 61:3, 65:4, 69:11, 73:8, 86:7, 90:16, 91:17, 92:18, 147:15, 148:6, 148:10, 148:13, 148:14, 150:1, 150:6, 150:7, 150:9, 153:18, 154:8, 154:17, 156:7, 157:14, 157:20, 159:4, 159:9, 159:20, 162:15, 164:18, 165:1, 165:17, 166:11, 166:19, 168:18, 169:1, 169:2, 169:12, 172:16,	192:2, 203:18, 216:19, 243:21, 244:7, 344:4, 345:7, 347:21, 352:16, 354:5, 359:22, 392:14, 410:20, 420:12, 429:9, 431:18 <b>receives</b> 20:18, 36:12, 215:18 <b>receiving</b> 46:1, 46:16, 155:17, 288:9, 347:15, 349:22, 424:5, 424:8 <b>recent</b> 248:2, 292:1, 293:18, 328:21, 333:1 <b>recently</b> 128:17, 248:4, 297:15 <b>recess</b> 32:8, 43:18, 120:21, 173:2, 184:22, 260:5, 311:5, 332:14, 369:16, 409:14, 424:15 <b>recitation</b> 106:20 <b>recites</b> 324:21 <b>reclassification</b> 192:18 <b>recognize</b> 126:5, 174:13, 276:8, 425:1 <b>recollect</b> 342:17 <b>recollection</b> 195:20, 268:5 <b>reconcile</b> 291:13, 294:18, 297:4, 297:6, 298:12, 298:16, 300:15, 304:7,	305:3 <b>reconciled</b> 288:21, 289:2, 289:19, 289:20, 290:12, 290:22, 294:22, 295:2, 295:6, 295:7, 295:8, 296:9, 301:1, 302:3, 302:19, 338:11 <b>reconciliation</b> 288:18 <b>reconciliations</b> 288:14, 296:10, 296:18 <b>reconciling</b> 277:2, 277:7, 303:20, 304:4, 304:12, 304:19 <b>reconsider</b> 63:9, 63:17, 66:6 <b>reconsideration</b> 127:10, 127:14, 210:17 <b>record</b> 13:5, 17:2, 32:5, 32:7, 32:10, 41:18, 43:17, 43:20, 50:10, 50:12, 52:7, 52:17, 62:11, 79:10, 112:21, 117:3, 118:1, 118:2, 119:2, 119:3, 119:5, 119:7, 120:20, 121:1, 129:21, 148:14, 163:21, 163:22, 164:4, 165:6, 165:8, 173:1, 173:4, 184:12, 184:20, 185:2, 207:14, 232:14, 259:2, 259:4, 259:6, 259:10, 259:13, 259:22,
---	--	--	---

CONTAINS CONFIDENTIAL PORTIONS  
12444

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

166

260:2, 260:4, 260:7, 261:20, 281:20, 287:3, 311:4, 311:7, 315:15, 317:9, 317:21, 318:1, 318:14, 319:9, 319:14, 319:15, 319:16, 319:17, 321:3, 322:5, 324:10, 325:16, 326:20, 332:8, 332:11, 332:13, 332:16, 342:18, 349:15, 357:22, 369:13, 369:15, 369:18, 373:13, 374:3, 380:8, 382:19, 383:6, 394:18, 398:8, 398:20, 402:17, 403:16, 409:11, 409:13, 409:16, 413:1, 424:7, 424:9, 424:12, 424:14, 424:17, 444:5, 446:5	390:13, 397:8, 402:14, 409:20, 410:12, 413:7, 415:12, 418:17, 419:4, 419:8, 425:18, 426:2, 426:22, 427:22, 428:14, 429:12, 429:13, 430:3, 431:9	79:6 <b>referring</b> 82:3, 84:22, 176:5, 224:21, 250:1, 251:10, 309:16, 345:10, 345:18, 397:5, 397:6, 397:7 <b>reflect</b> 55:7, 297:9, 398:21 <b>reflected</b> 298:21, 402:4, 402:14 <b>reflection</b> 229:7, 295:14, 296:11, 296:21 <b>reflective</b> 308:8 <b>refunded</b> 49:21, 166:17, 215:11 <b>refunding</b> 375:11 <b>refusal</b> 319:3 <b>refused</b> 100:3, 102:10, 106:13, 360:3, 377:7, 392:8, 412:2, 412:7, 412:22 <b>regard</b> 118:13, 138:2, 152:4, 166:18, 183:4, 199:5, 207:18, 212:11, 215:6, 215:7, 217:5, 218:13, 225:16, 231:18, 231:19, 232:19, 242:2, 249:11, 260:14, 271:6, 271:10, 283:20, 291:5, 297:22, 301:21, 311:11, 312:8, 327:19, 345:18, 346:14,	355:10, 360:14, 372:5, 374:13, 385:7, 387:14, 401:12, 401:13, 433:14, 434:2 <b>regarding</b> 14:14, 217:11, 217:15, 218:14, 274:13, 311:10, 317:15, 320:16, 345:8, 356:5, 362:7, 429:10 <b>regardless</b> 316:17, 371:14 <b>regards</b> 181:18 <b>registered</b> 2:14 <b>regretted</b> 348:15 <b>regular</b> 60:9 <b>regulations</b> 37:9 <b>regulators</b> 330:6 <b>reimburse</b> 250:2 <b>reinstated</b> 253:11, 253:12 <b>reinstatement</b> 193:3 <b>reinstates</b> 69:22 <b>reinsurance</b> 401:4, 401:10 <b>reissued</b> 193:1, 193:2 <b>reiterating</b> 342:2 <b>rejected</b> 180:12, 190:2, 191:1, 191:20, 261:4, 261:6, 262:10 <b>relate</b> 95:11 <b>related</b> 14:2, 38:9,
---	--	---	---

CONTAINS CONFIDENTIAL PORTIONS  
12445

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

167

195:11, 333:5, 333:7, 333:17, 340:14, 366:12, 372:4, 374:19, 384:4, 391:22, 416:1, 418:2, 418:5, 431:13, 437:8, 446:9	<b>relying</b>  12:21, 50:4, 54:10, 71:8, 91:18, 92:7, 106:5, 301:7, 303:8, 304:10, 304:14, 311:13, 311:22, 312:2, 312:8	270:15 <b>remove</b> 28:20, 249:1 <b>removed</b> 128:15, 266:4 <b>renew</b> 167:2 <b>rent</b> 297:19 <b>remain</b> 152:8 <b>remainder</b> 93:13 <b>remains</b> 380:11 <b>remand</b> 38:10, 42:16, 324:10, 325:17 <b>remanded</b> 324:10, 324:19, 326:10	301:2, 304:10, 309:7, 315:3, 332:4, 333:1 <b>reported</b> 1:22, 158:21, 171:17 <b>reporter</b> 2:14, 2:15, 10:12, 10:14, 145:11, 257:1, 396:12, 446:1 <b>reports</b> 277:8, 296:1, 304:6, 304:13, 304:20 <b>reprehensible</b> 40:19 <b>represent</b> 9:17, 50:8, 289:4 <b>representation</b> 106:5, 107:9, 232:3, 287:9, 317:13, 427:14 <b>representations</b> 91:19, 170:18, 345:8, 348:20, 350:9, 350:10, 350:11, 352:22, 376:2, 442:2 <b>representative</b> 12:10, 25:2, 25:5, 31:9, 99:8, 111:10, 112:19, 134:12 <b>represented</b> 283:22, 284:3, 314:2, 315:1, 319:1, 353:8, 353:9, 376:18 <b>representing</b> 9:14, 10:13, 285:3, 315:2 <b>represents</b> 86:20 <b>reputation</b> 438:12, 441:19, 442:1
--	---	---	---

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

168

<b>reputational</b>	127:10, 195:8, 201:3, 261:19, 311:10, 338:21, 339:17	345:9 <b>resolve</b> 203:2, 330:7 <b>resolved</b> 126:20, 127:2 <b>resolving</b> 330:4 <b>resources</b> 406:13 <b>respect</b> 56:15, 225:11, 281:20, 288:3, 358:1, 390:4 <b>respectful</b> 174:2, 394:8, 395:19 <b>respond</b> 22:8, 22:19, 259:17, 325:18, 342:9, 353:2, 354:11, 354:19, 354:21, 390:2, 427:9, 428:21 <b>responded</b> 106:10, 325:22, 343:19, 354:8, 374:22, 428:18 <b>responding</b> 237:19, 272:3 <b>response</b> 153:14, 153:15, 155:9, 164:1, 216:2, 255:5, 257:4, 320:10, 325:20, 340:19, 341:2, 341:12, 342:3, 342:10, 342:21, 343:2, 344:4, 352:15, 406:11, 407:12, 407:15, 428:10, 429:9 <b>responses</b> 5:17, 88:18, 118:17, 159:10, 159:11, 361:7, 386:10 <b>responsibilities</b> 28:18, 29:15,	29:18, 123:5, 197:7 <b>responsibility</b> 19:12, 29:16, 130:14 <b>responsible</b> 13:21, 19:7, 39:5, 72:20, 72:22, 111:19, 111:20 <b>responsive</b> 118:21 <b>responsively</b> 168:13 <b>rest</b> 165:3, 167:16, 366:21 <b>restart</b> 353:16 <b>restate</b> 42:12, 266:8, 383:16 <b>restatement</b> 41:8 <b>restroom</b> 310:22 <b>result</b> 23:7, 124:9, 136:2, 136:10, 136:18, 137:16, 139:13, 219:2, 221:2, 222:19, 230:7, 254:18, 275:18, 301:20, 316:7, 390:8, 391:5, 393:1, 394:11, 404:19, 406:1, 406:3, 406:9, 438:10, 439:1 <b>resulted</b> 192:13 <b>reticent</b> 270:10 <b>return</b> 26:17, 295:8, 297:5, 336:18 <b>returned</b> 299:2, 333:6,
<b>requested</b>	13:14, 38:9, 80:16, 80:18, 81:11, 82:20, 83:15, 83:18, 84:3, 101:1, 129:3, 167:2, 193:19, 201:4, 231:20, 342:2, 356:21, 357:14, 367:6, 367:16, 367:21, 368:14, 373:19, 409:19, 410:1, 411:5, 439:6	132:14 <b>requires</b> 175:15, 176:19, 251:21, 252:1, 391:18 <b>rereview</b> 272:17 <b>rescind</b> 129:1 <b>rescinded</b> 213:9, 253:11, 254:1, 254:2, 362:16, 362:18 <b>rescinding</b> 125:2, 229:6 <b>research</b> 199:3 <b>reserve</b> 23:11 <b>reserves</b> 26:8, 374:11 <b>reserving</b> 23:14 <b>resistant</b> 316:18, 417:16 <b>resolution</b> 125:12, 311:18,	22:8, 22:19, 259:17, 325:18, 342:9, 353:2, 354:11, 354:19, 354:21, 390:2, 427:9, 428:21 <b>responded</b> 106:10, 325:22, 343:19, 354:8, 374:22, 428:18 <b>responding</b> 237:19, 272:3 <b>response</b> 153:14, 153:15, 155:9, 164:1, 216:2, 255:5, 257:4, 320:10, 325:20, 340:19, 341:2, 341:12, 342:3, 342:10, 342:21, 343:2, 344:4, 352:15, 406:11, 407:12, 407:15, 428:10, 429:9 <b>responses</b> 5:17, 88:18, 118:17, 159:10, 159:11, 361:7, 386:10 <b>responsibilities</b> 28:18, 29:15,
<b>requesting</b>	16:3, 16:13, 17:5, 26:16, 38:12, 43:11, 79:8, 79:16, 79:18, 80:3, 80:10, 81:3, 81:20, 82:6, 83:6, 84:6, 145:10, 150:10, 194:18, 201:1, 203:17, 261:21, 315:22, 323:22, 340:12, 341:12, 356:16, 357:12, 410:11, 410:17, 412:21, 418:8, 446:8	175:15, 176:19, 251:21, 252:1, 391:18 <b>rereview</b> 272:17 <b>rescind</b> 129:1 <b>rescinded</b> 213:9, 253:11, 254:1, 254:2, 362:16, 362:18 <b>rescinding</b> 125:2, 229:6 <b>research</b> 199:3 <b>reserve</b> 23:11 <b>reserves</b> 26:8, 374:11 <b>reserving</b> 23:14 <b>resistant</b> 316:18, 417:16 <b>resolution</b> 125:12, 311:18,	106:10, 325:22, 343:19, 354:8, 374:22, 428:18 <b>responded</b> 106:10, 325:22, 343:19, 354:8, 374:22, 428:18 <b>responding</b> 237:19, 272:3 <b>response</b> 153:14, 153:15, 155:9, 164:1, 216:2, 255:5, 257:4, 320:10, 325:20, 340:19, 341:2, 341:12, 342:3, 342:10, 342:21, 343:2, 344:4, 352:15, 406:11, 407:12, 407:15, 428:10, 429:9 <b>responses</b> 5:17, 88:18, 118:17, 159:10, 159:11, 361:7, 386:10 <b>responsibilities</b> 28:18, 29:15,
<b>requests</b>	81:5, 83:16, 84:8, 84:12,		

CONTAINS CONFIDENTIAL PORTIONS

12447

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

169

333:18, 333:20 <b>returns</b> 275:11, 278:4, 300:16 <b>revenue</b> 274:22, 275:3, 275:4, 276:9, 277:4, 277:5, 283:13, 283:14, 328:11, 328:14, 328:15, 328:16, 329:15, 330:21, 337:11, 433:22 <b>reverse</b> 219:1 <b>review</b> 55:13, 55:20, 68:5, 77:22, 79:10, 86:10, 86:12, 89:14, 90:13, 147:10, 202:6, 207:5, 230:15, 230:18, 230:19, 231:3, 233:17, 244:3, 255:4, 255:8, 256:3, 257:6, 257:8, 260:11, 264:9, 269:11, 283:11, 284:19, 309:17, 314:11, 314:15, 315:5, 323:16, 340:13, 341:6, 343:20, 364:21, 393:12, 393:17, 393:18, 394:3, 397:13, 399:11, 421:13, 429:11, 429:13, 431:8, 432:7 <b>reviewed</b> 12:2, 12:3, 14:1, 14:2, 55:14, 56:6, 56:12, 67:16, 90:17, 200:3, 202:7, 202:12, 247:5, 313:9,	313:16, 313:18, 314:16, 362:14, 375:5, 418:12, 418:14, 418:19 <b>reviewing</b> 195:20, 200:16, 201:20, 203:5, 230:18, 282:8, 287:13, 321:2, 321:21 <b>revise</b> 298:16 <b>revisit</b> 273:4 <b>rewriting</b> 385:18 <b>richard</b> 157:1, 158:14 <b>rid</b> 422:18 <b>ridiculous</b> 345:15, 345:17, 354:18, 355:20, 356:1, 390:5, 422:19 <b>rights</b> 124:13, 125:21, 126:2, 126:7, 126:9, 126:13, 126:18, 127:6, 127:7, 212:9, 228:10, 251:9, 251:16, 254:21, 269:21, 403:4, 426:13 <b>risk</b> 23:10, 23:11, 227:3, 227:6, 247:15, 267:16, 348:21, 405:8 <b>rli's</b> 26:8, 45:2, 46:13, 48:22, 56:10, 82:20, 83:2, 83:3, 84:3, 91:6, 92:7, 110:7, 110:12, 110:18,	111:1, 114:11, 114:12, 114:13, 115:16, 149:5, 212:7, 215:4, 215:6, 344:8, 344:17, 344:19, 344:20, 345:12, 345:14, 349:10, 361:3, 371:5, 373:9, 384:1, 391:5, 391:14, 391:16, 393:1, 394:11, 404:1, 404:19, 406:4, 409:19, 414:22, 426:12, 426:13, 431:14, 435:16, 435:17, 436:3, 436:15, 437:16, 442:20 <b>rli-bonded</b> 441:5 <b>rlis</b> 240:1 <b>rly</b> 5:21 <b>roanoke</b> 4:6 <b>roberts</b> 6:13 <b>role</b> 281:14, 281:19 <b>roll</b> 245:13, 245:14 <b>rolling</b> 382:21, 383:1 <b>roman</b> 320:12 <b>rough</b> 434:21 <b>roughly</b> 15:18, 336:4, 404:16 <b>round</b> 133:21 <b>roundabout</b> 336:3 <b>routinely</b> 58:21, 182:1	<b>rpr</b> 1:22, 446:2 <b>rude</b> 62:6 <b>rule</b> 275:2, 275:6, 275:14, 276:9, 424:4 <b>rules</b> 32:2, 37:9, 308:2 <b>run</b> 60:1, 64:3, 64:11, 65:1, 66:3, 72:14, 72:15, 73:15, 132:7, 295:6, 310:22, 335:6 <b>runs</b> 269:6
<b>S</b>			

**s**

296:9

**saddened**

256:9

**safe**

407:5, 407:7

**safety**

38:14, 249:8

**said**

14:16, 16:1,

24:6, 24:13,

26:5, 37:21,

39:13, 41:17,

41:20, 41:22,

47:13, 48:14,

53:15, 61:10,

61:14, 62:15,

75:14, 77:14,

78:18, 83:8,

84:4, 94:9,

102:9, 102:11,

102:16, 107:3,

109:18, 121:12,

124:22, 126:8,

148:5, 151:14,

155:10, 162:14,

CONTAINS CONFIDENTIAL PORTIONS

12448

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

170

164:13, 164:16, 164:17, 166:8, 167:11, 167:13, 167:14, 202:13, 206:13, 241:19, 252:17, 254:22, 261:21, 269:13, 275:21, 280:7, 300:17, 301:12, 303:14, 304:9, 313:6, 318:10, 330:9, 338:9, 338:11, 349:16, 353:17, 358:1, 368:2, 372:3, 376:5, 378:13, 381:15, 387:5, 392:14, 401:13, 403:4, 404:12, 413:16, 414:13, 423:5, 427:20, 427:21, 428:7, 428:10, 428:13, 428:16, 429:2, 434:8, 436:10, 439:8, 440:13, 440:15, 440:17, 442:18, 446:6 <b>same</b> 23:9, 42:8, 64:6, 64:7, 75:22, 112:12, 114:10, 174:6, 174:10, 177:21, 178:18, 192:6, 206:10, 217:4, 219:8, 228:11, 228:13, 232:19, 232:22, 233:19, 239:3, 279:19, 280:7, 286:3, 286:5, 286:6, 291:17, 292:9, 294:6, 332:7, 356:9, 364:8, 396:13, 445:4 <b>sandoz</b> 8:9, 8:12,	107:19, 310:5, 310:10, 310:13, 359:4, 360:1, 361:18, 366:2, 372:2, 372:17, 373:12, 374:18, 375:10, 375:14, 380:5, 380:21, 381:3 <b>sandoz's</b> 360:4, 361:2 <b>sat</b> 277:17 <b>satisfaction</b> 361:12 <b>satisfy</b> 143:6, 305:7, 336:10 <b>saved</b> 230:7, 412:12 <b>saw</b> 152:13, 314:17, 366:6 <b>saying</b> 18:7, 18:8, 18:21, 24:9, 28:12, 41:6, 47:13, 47:14, 49:6, 52:12, 58:13, 77:8, 89:22, 90:7, 96:11, 98:14, 111:18, 117:2, 123:3, 132:9, 133:3, 153:10, 155:11, 161:18, 170:19, 176:13, 208:19, 210:1, 210:7, 211:1, 215:12, 219:9, 221:10, 222:3, 237:12, 239:4, 253:8, 266:19, 266:21, 299:9, 310:16, 319:21, 343:1, 344:2, 347:2, 349:18, 351:7, 351:9,	351:13, 354:10, 355:9, 355:12, 374:18, 376:2, 377:5, 389:8, 389:10, 394:6, 406:8, 406:11, 412:4, 412:7, 428:17, 428:22, 429:3, 429:5, 429:17, 436:22, 440:12 <b>says</b> 131:22, 133:1, 133:9, 135:8, 136:9, 147:2, 205:11, 205:15, 213:17, 217:9, 218:7, 218:18, 219:4, 219:15, 219:19, 220:3, 220:18, 220:21, 221:1, 221:22, 222:5, 225:6, 225:13, 245:21, 325:4, 325:8, 344:6, 344:22, 345:3, 345:6, 345:12, 345:20, 346:3, 347:5, 351:9, 353:15, 385:20, 426:5, 426:10, 427:2, 427:14, 429:21, 430:10 <b>scenario</b> 34:19, 71:21 <b>scenarios</b> 196:11 <b>schedule</b> 227:13, 229:11, 230:10, 230:14, 230:21, 231:2, 231:13 <b>scheduled</b> 135:13, 375:14 <b>schneider</b> 55:21, 56:8, 156:22, 158:13,	211:17, 314:3 <b>school</b> 243:8, 409:6 <b>scope</b> 24:2, 30:22, 434:7 <b>score</b> 334:18 <b>scores</b> 204:20, 438:19 <b>screaming</b> 99:22, 100:5 <b>screw</b> 83:20 <b>seal</b> 446:14 <b>seaman</b> 336:5, 336:6 <b>search</b> 315:11 <b>second</b> 15:4, 43:13, 91:8, 114:18, 138:5, 141:11, 200:10, 208:2, 217:6, 217:10, 217:18, 217:22, 220:22, 307:16, 314:4, 323:1, 324:13, 347:1, 373:6, 395:2 <b>secondly</b> 377:18 <b>secret</b> 414:10 <b>secure</b> 235:10, 235:22, 243:14, 388:17 <b>secured</b> 96:8, 185:15, 232:16 <b>securitization</b> 15:17 <b>securitized</b> 15:13 <b>security</b> 23:20, 33:22, 139:13, 146:18,
---	--	---	--

CONTAINS CONFIDENTIAL PORTIONS

12449

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

171

225:19, 227:13, 227:18, 227:21, 235:20, 237:4, 243:16, 267:11 <b>security's</b> 255:5, 257:4 <b>see</b> 15:14, 56:11, 56:13, 70:15, 70:18, 72:7, 84:22, 88:19, 88:20, 101:11, 103:1, 133:9, 140:2, 146:16, 152:14, 157:3, 157:6, 158:17, 158:18, 160:20, 162:5, 163:16, 167:17, 178:14, 181:7, 181:9, 203:19, 214:10, 215:3, 215:4, 217:19, 221:4, 221:8, 242:8, 243:8, 273:16, 273:21, 286:13, 287:8, 287:11, 292:10, 295:11, 298:4, 298:7, 298:14, 308:14, 317:18, 317:19, 318:2, 319:6, 322:2, 323:10, 323:12, 326:12, 345:12, 349:3, 364:1, 364:9, 372:7, 390:1 <b>seek</b> 27:6, 63:8, 125:12, 205:11, 210:16, 213:10, 312:10 <b>seeking</b> 66:8, 203:22, 265:11, 265:21, 440:2, 443:17 <b>seem</b> 231:11, 274:3,	300:22, 330:3 <b>seemed</b> 417:14 <b>seemingly</b> 386:15 <b>seems</b> 51:2, 87:7, 138:12, 138:13, 340:21 <b>seen</b> 67:15, 67:17, 68:3, 89:16, 229:3, 255:7, 257:9, 277:8, 376:9, 377:6, 382:11, 418:17 <b>segment</b> 275:2 <b>send</b> 73:19, 91:14, 92:11, 120:12, 155:3, 178:18, 178:19, 200:21, 201:5, 205:15, 215:12, 257:21, 271:5, 326:2, 326:3, 354:15, 392:19, 418:18, 429:3 <b>sending</b> 50:1, 73:9, 91:15, 103:19, 361:9, 366:2 <b>sends</b> 36:16, 120:13, 132:5 <b>sense</b> 39:8, 94:14, 94:21, 104:21, 130:7, 173:22, 174:12, 189:12, 209:9, 275:5, 280:10, 280:12, 309:22, 329:10, 347:14, 349:8, 350:2, 441:14 <b>sensitive</b> 415:17, 418:9	<b>sent</b> 46:18, 55:15, 73:4, 76:2, 101:20, 102:11, 103:11, 135:5, 155:9, 155:10, 158:13, 159:16, 162:5, 163:14, 167:1, 231:21, 250:7, 262:20, 311:17, 341:17, 341:18, 355:2, 359:4, 374:15, 378:17, 379:3, 379:8, 384:10, 401:21, 403:15, 407:2, 428:22, 429:4 <b>sentence</b> 136:14, 136:15, 139:17, 218:21, 220:3, 220:18, 220:20, 220:22 <b>sep</b> 6:19 <b>separate</b> 195:8, 238:2, 293:16, 433:21, 441:14 <b>separated</b> 293:15 <b>separately</b> 265:13 <b>september</b> 69:13, 70:12, 218:9, 282:22, 283:3, 283:6, 446:16 <b>series</b> 121:4, 182:5, 405:4, 406:12 <b>serious</b> 34:2 <b>seriously</b> 248:15, 316:3 <b>serve</b> 335:4 <b>served</b> 77:8, 178:16	<b>service</b> 71:8, 242:20, 266:2, 308:8 <b>services</b> 1:8, 1:12, 5:11, 7:3, 7:5, 7:8, 9:4, 9:7, 10:1, 11:8, 11:21, 12:11, 16:19, 74:6, 78:15, 236:13, 238:2, 241:12, 246:9, 257:22, 292:18, 401:5, 415:8, 415:11, 415:14, 425:18, 429:11 <b>serving</b> 73:22 <b>set</b> 87:4, 89:7, 90:20, 122:1, 135:18, 141:11, 144:1, 150:19, 202:15, 204:11, 224:21, 233:11, 276:12, 410:1, 410:4, 427:18, 428:19, 429:12, 446:13 <b>sets</b> 128:7, 206:18, 256:3, 291:10, 298:1 <b>setting</b> 203:13 <b>settlement</b> 182:3, 182:4 <b>seven</b> 31:12, 31:22, 115:11, 200:4, 202:13, 409:9 <b>several</b> 14:2, 98:5, 195:9, 196:10, 212:10, 213:9, 271:16, 285:14, 288:4, 288:5,
---	---	---	---

CONTAINS CONFIDENTIAL PORTIONS  
12450

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

172

311:19, 339:17, 349:17, 383:16, 386:6, 405:15 <b>sex</b> 243:6 <b>shadows</b> 146:2, 228:17 <b>share</b> 293:8 <b>shared</b> 352:12, 403:21, 404:10 <b>sheet</b> 291:9, 292:19, 293:2, 294:9, 294:12, 309:8, 309:9, 310:3, 310:5, 310:6, 310:9, 310:19, 338:4, 338:7, 338:8, 338:10, 338:15, 338:16, 392:19, 394:4, 445:7 <b>sheets</b> 14:3 <b>shipped</b> 178:8 <b>shocking</b> 97:15 <b>short</b> 354:17 <b>shortly</b> 177:22 <b>should</b> 94:15, 164:1, 164:14, 233:18, 259:13, 376:1, 376:11, 376:16, 379:17, 392:9, 412:10, 430:7, 430:8, 436:20 <b>shouldn't</b> 121:17 <b>show</b> 12:20, 13:19, 26:9, 26:20, 27:4, 28:16,	67:13, 71:18, 79:13, 123:12, 128:18, 157:11, 157:12, 161:6, 161:8, 210:12, 211:4, 215:8, 247:2, 272:18, 303:3, 329:3, 362:16, 379:8, 392:12, 424:21, 429:1, 429:4, 429:5, 435:19, 435:21 <b>showed</b> 325:12, 397:21 <b>showing</b> 56:9, 56:10, 124:19, 243:12 <b>shown</b> 168:17, 198:1, 218:19, 218:22, 221:1 <b>shows</b> 44:9, 121:15, 371:11 <b>sic</b> 306:21 <b>side</b> 59:7, 219:1, 228:8 <b>sign</b> 100:15, 308:11, 352:2, 352:3, 371:4, 384:2, 384:22, 390:13, 411:13, 412:2, 412:8, 412:21, 414:7, 418:13, 441:10 <b>signature</b> 445:10 <b>signature-b7fzp</b> 446:19 <b>signed</b> 196:8, 380:3, 418:6, 445:7 <b>significant</b> 27:8, 157:8,	157:22, 158:20, 227:9, 247:10, 248:18, 273:1, 275:7, 298:13, 333:21, 334:21, 334:22, 335:1, 389:17, 405:6, 411:7, 412:19, 417:1 <b>significantly</b> 189:9 <b>signing</b> 385:3, 414:4, 417:16, 446:8 <b>silly</b> 220:8, 231:11, 363:4 <b>similarly</b> 158:13 <b>simple</b> 30:14, 30:19, 31:4, 31:6, 83:15, 106:21, 116:17, 135:1, 289:17, 304:22, 398:1 <b>simpler</b> 131:10 <b>simply</b> 144:12, 411:12 <b>simultaneously</b> 71:5 <b>since</b> 43:13, 50:1, 50:3, 73:3, 88:6, 91:14, 91:17, 94:3, 94:9, 96:12, 115:20, 150:2, 151:6, 154:9, 156:8, 162:15, 171:17, 249:20, 274:9, 284:6, 338:20, 350:6, 350:13, 410:19 <b>single</b> 20:13, 22:1, 35:15, 61:13,	78:21, 82:11, 102:16, 214:2, 214:5, 223:3, 250:8, 313:19, 315:7, 316:19 <b>sir</b> 89:3, 146:15 <b>sit</b> 17:3, 68:13, 89:6, 181:13, 305:9 <b>sitting</b> 46:10, 47:2, 47:14, 48:21, 50:19, 51:14, 58:4, 78:16, 122:7, 169:17, 186:17, 198:16, 199:22, 204:9, 253:15, 254:13, 254:19, 312:13, 313:1, 315:8, 317:1, 337:17, 392:21, 408:6, 421:5, 442:14 <b>situation</b> 39:7, 39:9, 122:19, 125:1, 178:18, 239:7, 243:10, 301:18 <b>situations</b> 38:15, 41:1, 43:9, 66:9, 67:3, 76:10, 102:2, 128:18, 196:11, 324:7 <b>six</b> 78:5, 115:20, 116:4, 200:3, 202:13, 313:7, 313:8 <b>slow</b> 76:7, 436:7 <b>slowed</b> 301:17 <b>slower</b> 152:20 <b>small</b> 327:6
---	---	--	--

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

173

<b>smaller</b>	<b>somebody's</b>	296:2	<b>speak</b>
20:17, 247:12, 247:15	83:19, 83:20	<b>sooner</b>	257:10, 331:5, 331:6
<b>smattering</b>	<b>somewhat</b>	367:15	<b>speaking</b>
166:14	40:18, 41:13, 126:8, 126:10,	310:12	31:19, 165:18, 232:18, 342:17,
<b>snapshot</b>	299:12	<b>sorry</b>	350:15
189:5, 244:17, 247:1	<b>someone</b>	15:5, 61:11, 86:1, 95:7,	<b>speaks</b>
<b>sole</b>	40:8, 42:1, 129:21, 371:6	121:11, 133:13,	219:13, 220:2
183:3	<b>something</b>	138:9, 139:16,	<b>special</b>
<b>solve</b>	16:22, 17:1, 20:9, 38:13,	149:9, 152:7, 152:19, 154:12,	45:21, 293:13, 402:7
329:19	38:20, 45:15,	159:3, 172:19,	<b>specific</b>
<b>some</b>	46:12, 46:20, 48:11, 49:4, 53:3, 57:5,	172:21, 177:5, 190:3, 193:1, 202:11, 210:3,	26:7, 54:9, 80:8, 110:4, 127:8, 159:18, 177:5, 187:12,
13:5, 14:9, 14:13, 15:19, 17:13, 18:19, 26:17, 33:22, 40:10, 45:8, 66:8, 81:14, 81:15, 82:10, 104:10, 105:10, 111:6, 113:4, 113:6, 114:2, 143:18, 178:3, 179:3, 179:4, 181:1, 183:16, 196:1, 196:3, 202:17, 202:20, 203:11, 208:6, 209:21, 233:4, 237:3, 242:13, 243:2, 243:3, 246:1, 256:12, 256:15, 258:15, 260:10, 286:17, 306:16, 307:14, 333:4, 340:6, 345:7, 352:14, 352:15, 355:6, 369:4, 378:21, 383:15, 384:6, 384:14, 393:7, 394:5, 432:5, 432:20	210:4, 220:15, 221:20, 237:9, 237:13, 255:11, 261:9, 262:9, 262:13, 266:8, 293:7, 309:9, 314:14, 322:10, 322:13, 346:17, 353:6, 353:17, 353:18, 367:1, 383:20, 432:1, 442:10	194:5, 195:10, 198:17, 203:14, 205:19, 210:11, 211:3, 212:20, 212:21, 218:5, 218:7, 243:11, 253:7, 253:15, 271:19, 283:2, 288:16, 316:9, 318:11, 321:5, 338:18, 338:19, 385:13, 388:9, 396:2, 405:2, 413:14, 425:8	
<b>some-odd</b>	<b>sometime</b>	14:14, 16:17, 26:17, 44:12, 143:18, 189:5, 201:3, 237:3, 267:9, 425:6	<b>specifically</b>
201:3	421:12	<b>sorts</b>	15:12, 32:19, 68:22, 122:11, 126:12, 137:15, 205:17, 209:19, 211:7, 211:9,
<b>somebody</b>	<b>sometimes</b>	374:17	266:13, 267:19, 267:20, 269:20, 270:2, 270:3, 284:16, 320:14, 339:16, 357:4, 364:5, 368:6, 402:17, 402:18, 404:12, 431:5, 434:17, 439:4, 441:18, 441:22
317:14	63:17, 63:19, 63:20, 69:20, 71:6, 71:7, 73:19, 77:7, 122:14, 128:12, 151:15	<b>sound</b>	<b>specifics</b>
	<b>somewhere</b>	316:20, 393:22	337:19
	152:11, 364:2	173:20, 231:17,	
	<b>soon</b>	264:1	
	263:2, 278:4, 278:5, 279:15, 280:1, 280:16, 289:1, 289:22, 290:3, 291:4,	<b>sounded</b>	
		139:18	
		<b>sounds</b>	
		92:20, 200:12, 308:7, 440:3	

CONTAINS CONFIDENTIAL PORTIONS  
12452

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

174

<b>specified</b> 219:1, 220:4, 221:2, 274:1	<b>stab</b> 153:13	92:5, 250:16, 348:16, 399:6,	356:15, 363:21
<b>specify</b> 347:9	<b>stability</b> 243:16, 247:19	418:7	<b>stay</b> 259:13, 330:13,
<b>speculate</b> 107:6, 200:12	<b>stable</b> 243:13	<b>statement</b> 37:18, 209:10,	330:14
<b>spencer</b> 4:19, 10:7	<b>staff</b> 315:6, 316:17,	211:13, 235:16,	<b>stefanie</b> 7:12
<b>spend</b> 49:12, 165:3, 319:19	<b>stage</b> 321:12	250:19, 284:1, 285:6, 287:6,	<b>step</b> 355:19
<b>spending</b> 50:20, 53:9, 53:15	<b>stained</b> 391:2	287:15, 288:1, 291:9, 293:18,	<b>steps</b> 145:3, 145:12
<b>spent</b> 390:15, 405:7, 405:12, 407:12, 434:17	<b>stamped</b> 292:6	294:9, 296:4, 296:13, 296:16,	<b>stick</b> 19:5, 134:18,
<b>spiraled</b> 351:17	<b>stand</b> 35:13, 61:9,	297:4, 297:15, 297:19, 299:5,	422:20
<b>spoke</b> 342:11, 342:12, 342:15	<b>standing</b> 66:11, 78:18,	299:13, 301:7, 302:14, 303:17,	<b>sticker</b> 364:3
<b>spoken</b> 156:3	<b>standard</b> 277:15	365:1, 365:5, 373:4, 422:5,	<b>still</b> 16:18, 69:1,
<b>spreadsheet</b> 54:13, 54:16, 54:17, 54:21, 55:5, 55:13, 55:20, 56:6, 56:9, 70:10, 86:19, 88:3, 90:6, 90:10, 155:7, 155:11, 157:9, 158:1, 160:8, 170:17, 183:21, 186:14, 188:11, 191:4, 191:5, 191:9, 191:10, 192:7, 192:21	<b>starts</b> 20:12, 109:11	423:3	82:15, 85:8,
<b>spreadsheets</b> 55:15, 56:7, 98:5, 188:17	<b>started</b> 14:13, 69:7, 80:9, 97:11, 170:7, 228:3, 233:3, 387:22	<b>statements</b> 276:4, 278:3, 278:15, 279:15,	121:18, 122:3,
<b>st</b> 88:4, 350:6, 350:13	<b>starting</b> 44:10, 347:10, 351:17	280:2, 280:8, 280:17, 281:2,	122:12, 123:4,
	<b>stands</b> 238:11, 238:17	282:6, 282:7, 282:10, 282:15,	123:15, 123:22,
	<b>start</b> 20:12, 109:11	282:20, 287:18, 288:22, 289:9,	124:1, 137:2,
	<b>start</b> 14:13, 69:7, 80:9, 97:11, 170:7, 228:3, 233:3, 387:22	289:21, 290:7, 298:16, 300:17,	138:16, 196:2,
	<b>started</b> 44:10, 347:10, 351:17	303:2, 305:3	196:9, 227:20,
	<b>starting</b> 69:6, 70:11, 230:8, 367:13	<b>states</b> 1:1, 9:7, 39:11, 146:19,	231:9, 232:7,
	<b>starts</b> 390:12	153:17, 235:13,	236:17, 237:5,
	<b>state</b> 9:17, 13:4, 37:2, 37:3, 37:8, 192:12, 235:8, 330:7,	236:6, 236:16, 335:5, 373:1,	238:4, 238:15,
	<b>stated</b> 363:18	418:16	239:5, 255:22,
	37:13, 70:20,	<b>statewide</b> 306:20, 381:16	289:15, 289:19,
		<b>stating</b> 49:19, 354:8	302:18, 347:19,
		<b>station</b> 2:6, 3:6, 9:15	415:8, 415:11
		<b>status</b> 56:10, 126:2,	<b>stolen</b> 418:16, 419:4,
		126:13, 271:11,	419:8, 423:15,
		274:13, 300:11,	424:8
			<b>stood</b> 97:18, 100:6
			<b>stop</b> 33:1, 62:8,
			97:10, 114:21,
			322:13, 346:16,
			347:1, 368:13,
			369:22, 370:9,
			371:13, 424:1
			<b>stopped</b> 50:1, 91:15,
			195:3, 266:20,
			273:2, 344:8,

CONTAINS CONFIDENTIAL PORTIONS  
12453

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

175

347:6, 349:22, 352:20, 354:1, 368:20, 370:20, 371:9 <b>stopping</b> 361:5 <b>store</b> 46:21 <b>straightforward</b> 113:16, 113:21, 225:21 <b>stream</b> 328:16, 329:15, 330:22 <b>streams</b> 328:11 <b>street</b> 3:14 <b>strike</b> 152:6, 185:9 <b>stronger</b> 275:18, 301:20, 384:21 <b>study</b> 207:5 <b>stuff</b> 102:1, 235:4, 283:14, 365:20 <b>subject</b> 131:2, 239:10 <b>subjected</b> 61:8 <b>submit</b> 127:19, 175:14, 193:9, 218:18, 218:22, 221:1, 289:21, 325:11 <b>submitted</b> 174:14, 183:6, 190:1, 190:22, 191:19, 193:10, 232:9, 284:15, 287:6 <b>submitting</b> 193:14, 194:6, 194:11, 197:2, 197:20, 198:11, 316:15	<b>subpoena</b> 255:6, 257:4 <b>subsequent</b> 199:19 <b>sequential</b> 130:8 <b>subset</b> 127:9, 210:12, 233:1 <b>substantia</b> 439:11 <b>substantial</b> 179:10, 179:13 <b>substantially</b> 124:19, 124:20 <b>substantiate</b> 202:9, 206:20, 316:1, 324:1, 325:5, 439:22, 440:9 <b>substantiated</b> 439:9 <b>substantive</b> 124:13, 125:21, 126:1 <b>subtract</b> 153:1 <b>suburbans</b> 41:2 <b>success</b> 18:9, 38:21, 92:3, 95:19 <b>successful</b> 27:13, 100:19, 185:20, 185:22, 186:2, 186:9, 190:13, 241:6 <b>successive</b> 405:4 <b>suffered</b> 438:9 <b>sufficient</b> 203:21, 326:6, 326:8, 336:9, 336:12, 336:15, 336:22, 337:3, 337:5, 337:7, 346:1, 346:4,	427:6, 433:2 <b>sugar</b> 379:20 <b>suggest</b> 75:17, 158:3 <b>suggested</b> 378:10 <b>suggesting</b> 140:18, 210:9, 210:11, 360:22, 361:3, 375:22, 376:1, 376:6, 376:8 <b>suing</b> 241:20 <b>suite</b> 2:7, 3:7, 3:15, 4:12 <b>sum</b> 44:20, 48:20, 54:5, 92:17, 99:14, 105:5, 122:20, 123:13, 140:11, 141:15, 141:17, 142:14, 142:15, 144:3, 238:14 <b>summarize</b> 340:6 <b>summarizing</b> 362:2 <b>summary</b> 5:12, 5:14, 5:16, 85:16, 87:5, 88:17, 109:8, 257:6 <b>supplement</b> 183:19, 255:2, 264:10, 265:2, 271:4 <b>support</b> 215:17, 312:14, 313:21, 317:1, 319:11, 360:10, 362:17, 422:3, 423:2, 439:6, 443:14 <b>supported</b> 201:15, 201:22,	202:19, 203:15, 314:12 <b>supporting</b> 54:14, 204:12, 314:17 <b>supports</b> 383:13 <b>suppose</b> 94:13, 179:8 <b>supposed</b> 74:22, 75:3, 82:12, 97:19, 101:22, 130:12, 133:21, 219:16, 279:10, 359:22, 396:3 <b>surely</b> 118:15 <b>sureties</b> 18:12, 18:14, 109:17, 110:2, 110:8, 110:19, 150:4, 381:8, 381:10, 381:11, 388:17, 437:7, 438:13 <b>surety</b> 18:21, 19:7, 19:11, 20:1, 20:18, 20:19, 20:20, 21:3, 21:4, 21:15, 22:2, 22:3, 22:15, 22:17, 23:2, 24:10, 24:14, 25:14, 25:22, 29:21, 30:3, 30:9, 30:10, 30:15, 30:16, 32:14, 34:20, 34:22, 35:4, 35:19, 35:21, 36:12, 36:14, 36:16, 100:15, 102:6, 102:7, 109:21, 110:4, 116:11, 125:5, 125:6,
---	---	---	---

CONTAINS CONFIDENTIAL PORTIONS

12454

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

176

127:19, 132:8, 146:20, 175:16, 176:21, 182:4, 182:6, 205:6, 205:13, 205:15, 206:5, 236:8, 236:9, 236:22, 238:11, 238:18, 239:6, 239:12, 346:6, 355:18, 356:19, 356:22, 357:2, 357:7, 357:10, 357:20, 367:11, 368:18, 368:19, 369:1, 370:4, 370:7, 372:5, 372:15, 372:18, 373:13, 381:13, 386:17, 386:18, 387:20, 388:1, 388:4, 388:15, 388:16, 389:1, 391:17, 401:3, 403:22, 404:5, 404:10, 441:8 <b>surety's</b> 24:3, 32:19, 236:11 <b>surprise</b> 301:2 <b>surrounding</b> 396:4 <b>susceptible</b> 124:6 <b>suspicious</b> 417:21 <b>sussman</b> 7:15, 7:18, 7:19, 8:4, 8:6, 101:1, 102:16, 103:12, 107:20, 125:13, 194:19, 201:1, 201:7, 201:13, 201:16, 201:21, 203:17, 211:12, 323:7, 323:11, 323:22,	326:2, 326:12, 327:12, 327:15, 344:14, 348:1, 348:9, 365:11, 366:5, 386:20, 392:8, 407:2, 410:5, 410:21 <b>sussman's</b> 319:3, 324:8, 325:3 <b>sustain</b> 404:18 <b>sustained</b> 192:12, 390:8, 393:1 <b>swear</b> 10:14 <b>swearing</b> 226:19 <b>sworn</b> 10:17 <b>symptom</b> 119:20 <b>system</b> 44:9	282:13, 283:17, 319:19, 321:1, 375:6, 387:11, 393:7, 394:15, 394:17, 395:13, 398:8, 424:10 <b>taken</b> 29:19, 32:8, 34:16, 35:17, 43:18, 120:21, 145:3, 145:12, 173:2, 177:16, 184:22, 255:21, 260:5, 311:5, 332:14, 369:16, 409:14, 424:15, 442:7, 442:19, 443:6, 446:4, 446:6 <b>takes</b> 28:21, 29:9, 71:7 <b>taking</b> 9:15, 43:13, 95:20, 232:5, 233:4, 281:14, 282:11, 398:11, 425:10, 437:18 <b>talk</b> 14:11, 26:5, 34:3, 39:17, 77:15, 77:16, 118:10, 118:11, 131:17, 174:21, 175:8, 175:17, 197:12, 224:11, 237:16, 271:21, 280:12, 315:5, 344:14, 396:15 <b>talked</b> 34:17, 39:15, 40:4, 171:14, 196:14, 199:9, 249:11, 261:22, 309:5, 341:16, 342:20, 343:13, 367:2, 414:4 <b>tax</b> 275:11, 278:4,	282:21, 295:7, 297:5, 300:16, 309:7 <b>taxes</b> 273:7, 289:20 <b>team</b> 298:17, 349:4, 351:9, 351:10, 351:11, 351:12, 353:14, 362:10, 362:11, 402:12 <b>telephonic</b> 3:12 <b>tell</b> 48:2, 50:21, 58:4, 71:10, 76:4, 107:22, 158:19, 159:11, 205:10, 211:7, 211:9, 254:17, 257:18, 258:11, 265:5, 278:20, 280:11, 293:20, 294:19, 294:20, 303:17, 304:7, 304:11, 317:3, 318:5, 338:17, 343:7, 350:12, 350:19, 360:2, 360:3, 370:8, 377:7, 392:16, 397:15, 431:11, 435:15, 438:14, 441:18, 441:22 <b>telling</b> 46:4, 72:9, 98:9, 111:16, 111:20, 135:17, 253:3, 300:1, 309:17, 347:1, 373:20, 420:19 <b>ten</b> 403:10, 407:3, 407:8 <b>tendered</b> 379:6 <b>term</b> 40:20, 41:10,
--	--	--	--

## Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

177

172:5, 378:19	42:1, 42:12,	348:8, 348:17,	321:17
<b>terminated</b>	42:18, 53:7,	349:5, 349:9,	<b>themselves</b>
116:11	61:22, 62:3,	349:17, 350:4,	9:17
<b>terms</b>	62:7, 62:11,	360:5, 360:6,	<b>thereafter</b>
127:3, 132:9,	67:5, 126:4,	360:21, 361:7,	446:7
133:5, 135:8,	126:15, 153:7,	366:1, 368:21,	<b>thereby</b>
139:14, 139:21,	156:6, 161:12,	373:2, 373:9,	270:10
142:18, 142:20,	161:15, 161:19,	374:15, 379:3,	<b>therefore</b>
145:20, 176:6,	162:11, 164:12,	386:21, 424:19,	19:8, 112:20,
212:3, 212:11,	167:5, 167:8,	424:22, 426:4,	247:15, 296:17
217:14, 218:1,	167:13, 167:22,	426:22, 427:10,	<b>they'd</b>
218:2, 219:9	168:1, 168:2,	427:17, 428:1,	44:13
<b>terrified</b>	168:18, 168:21,	428:6, 428:9,	<b>thing</b>
40:17	184:7, 207:1,	428:13, 428:15,	38:22, 41:14,
<b>terrorist</b>	207:4, 211:1,	429:5, 429:6,	100:17, 128:21,
419:2	220:10, 246:3,	429:7, 429:10,	152:12, 170:6,
<b>test</b>	246:4, 268:3,	429:13, 429:19,	174:6, 177:21,
397:1, 397:2	268:13, 274:12,	429:20, 429:21,	179:15, 186:12,
<b>testified</b>	274:15, 281:16,	430:1, 430:3	210:6, 220:14,
10:19, 33:3,	286:21, 291:6,	<b>thank</b>	222:8, 228:11,
42:4, 51:17,	312:8, 346:14,	11:6, 11:16,	245:16, 249:4,
57:16, 149:18,	346:15, 356:4,	14:6, 42:13,	286:5, 313:10,
159:2, 166:19,	356:8, 357:13,	68:13, 68:19,	355:20, 398:1
209:18, 253:4,	358:4, 358:6,	84:14, 84:15,	<b>things</b>
277:19, 311:10,	358:8, 368:9,	84:16, 85:2,	18:18, 20:11,
321:13, 356:8,	387:6, 420:3,	103:21, 116:3,	34:6, 113:13,
368:5, 377:18,	434:10, 435:6,	138:1, 138:17,	120:5, 143:3,
383:11	445:4, 445:6,	141:21, 150:20,	147:19, 177:15,
<b>testify</b>	446:6	152:2, 156:19,	222:19, 230:5,
10:17, 21:1,	<b>tether</b>	190:9, 193:4,	249:16, 252:15,
31:8, 53:17,	409:8	235:6, 262:22,	259:1, 275:9,
57:19, 77:18,	<b>text</b>	264:2, 285:20,	276:13, 289:14,
77:19, 115:2,	145:10	292:12, 320:18,	294:21, 294:22,
181:6, 220:13,	<b>th</b>	326:22, 327:17,	296:20, 331:17,
271:19, 271:20,	55:22, 69:10,	329:1, 331:19,	361:10, 361:14,
276:20, 317:15,	69:13, 70:12,	339:20, 339:21,	361:17, 393:5,
321:4, 321:6,	70:15, 103:10,	343:3, 343:9,	398:19, 418:21,
321:12, 386:1,	158:11, 213:14,	364:17, 371:20,	421:4, 437:10
397:10, 421:4,	218:8, 218:9,	384:16, 391:7,	<b>thinking</b>
439:4	225:7, 286:12,	413:18, 414:2,	181:10, 220:15,
<b>testifying</b>	287:4, 321:22,	414:15, 414:16,	233:3, 244:2,
18:3, 115:7,	340:20, 341:13,	414:21, 425:16,	244:19, 302:22,
115:8, 168:4,	342:3, 342:7,	433:10, 444:1	308:17, 365:18,
321:11	342:16, 342:22,	<b>thankful</b>	379:14
<b>testimony</b>	343:13, 344:11,	37:10	<b>third</b>
12:10, 12:16,	344:16, 347:11,	<b>thankfully</b>	258:6, 286:17,
24:14, 24:19,		37:21	306:13, 345:20
31:4, 41:8,		<b>thanks</b>	<b>third-party</b>
		61:8, 91:10,	236:22, 239:12

CONTAINS CONFIDENTIAL PORTIONS

12456

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

178

<b>thornton</b>	<b>through</b>	400:2, 401:17 <b>timing</b>	44:2, 125:15, 154:21, 178:7,
274:16, 276:19, 281:14, 281:19, 281:22, 282:5, 282:8, 282:11, 282:12, 282:14, 282:18, 283:1, 283:10, 283:18	1:13, 14:18, 14:19, 33:14, 46:4, 46:22, 47:10, 47:14, 48:16, 48:17, 49:8, 49:13, 50:20, 50:21, 51:8, 63:15, 153:4, 160:9, 160:10, 164:7, 164:10, 193:7, 200:14, 201:20, 203:2, 213:12, 214:16, 240:16, 242:17, 260:15, 265:21, 275:12, 287:15, 291:16, 292:3, 293:12, 295:21, 330:14, 340:7, 344:11, 378:19, 383:10, 389:10, 394:6, 416:14, 425:7	9:13, 10:13, 12:16, 16:13, 17:4, 46:10, 47:2, 48:21, 50:19, 51:15, 53:8, 54:13, 58:4, 68:13, 87:10, 89:6, 99:5, 118:12, 122:7, 134:18, 148:2, 153:8, 181:13, 186:4, 186:18, 186:22, 189:21, 198:16, 199:22, 227:5, 253:15, 254:13, 254:19, 263:11, 263:15, 264:11, 279:9, 289:16, 290:8, 290:10, 292:8, 305:10, 311:9, 312:14, 313:2, 315:8, 317:1, 320:4, 321:11, 337:17, 382:10, 392:21, 403:9, 408:6, 418:19, 442:15	423:15, 269:10, 280:14, 294:17, 303:9, 304:19, 305:1, 305:2, 311:16, 312:2, 312:19, 316:17, 357:6, 359:18, 367:13, 379:18, 397:12, 397:14, 429:19 <b>tomorrow</b>
<b>thoroughly</b>			427:20, 428:7, 428:11, 429:1, 429:4, 429:13, 429:17
<b>thought</b>			<b>ton</b>
16:8, 51:10, 72:2, 237:16, 274:2, 313:6, 313:7, 346:22, 366:19, 390:4, 434:11	200:14, 201:20, 203:2, 213:12, 214:16, 240:16, 242:17, 260:15, 265:21, 275:12, 287:15, 291:16, 292:3, 293:12, 295:21, 330:14, 340:7, 344:11, 378:19, 383:10, 389:10, 394:6, 416:14, 425:7	17:4, 46:10, 47:2, 48:21, 50:19, 51:15, 53:8, 54:13, 58:4, 68:13, 87:10, 89:6, 99:5, 118:12, 122:7, 134:18, 148:2, 153:8, 181:13, 186:4, 186:18, 186:22, 189:21, 198:16, 199:22, 227:5, 253:15, 254:13, 254:19, 263:11, 263:15, 264:11, 279:9, 289:16, 290:8, 290:10, 292:8, 305:10, 311:9, 312:14, 313:2, 315:8, 317:1, 320:4, 321:11, 337:17, 382:10, 392:21, 403:9, 408:6, 418:19, 442:15	37:9 <b>tonight</b>
<b>thousand</b>			379:15, 394:4, 404:17
436:11			<b>took</b>
<b>thousands</b>			31:12, 32:12, 98:15, 98:16, 98:21, 121:3, 185:4, 260:9, 329:16, 369:20, 378:21
15:21, 182:21, 182:22, 333:20	<b>throughout</b>		<b>top</b>
<b>threat</b>			5:18, 6:3, 6:16, 7:11, 7:14, 8:8, 8:11, 46:19, 47:17, 56:14, 69:17, 70:8, 127:11, 169:11, 186:20, 204:8, 240:12, 255:14, 287:12, 292:15, 305:11, 323:19
223:1, 407:4	<b>throw</b>		<b>topic</b>
<b>threatening</b>			182:1, 318:11, 320:12, 396:2
385:5	<b>throwing</b>		<b>topics</b>
<b>three</b>			12:5, 12:7,
25:19, 49:13, 53:9, 61:12, 69:12, 70:9, 74:14, 75:11, 76:2, 78:4, 80:6, 97:22, 110:13, 110:18, 114:14, 115:4, 115:8, 115:11, 115:15, 119:19, 162:6, 180:7, 184:17, 248:9, 249:3, 321:8, 321:9, 369:1, 394:19, 394:20, 400:2, 407:2	41:1, 81:7 <b>thrown</b>		
<b>threw</b>			
237:11, 322:22	238:20 <b>tieder</b>		
	2:5, 3:5 <b>timely</b>		
	63:14, 64:17 <b>times</b>		
	25:20, 110:13, 110:18, 115:12, 119:19, 194:17, 211:20, 213:14, 279:20, 305:1, 367:13, 370:8, 386:7, 386:12, 394:19, 394:20,	9:11, 134:6, 396:1 <b>together</b>	
<b>thornton</b>	<b>through</b>	400:2, 401:17 <b>timing</b>	44:2, 125:15, 154:21, 178:7,
274:16, 276:19, 281:14, 281:19, 281:22, 282:5, 282:8, 282:11, 282:12, 282:14, 282:18, 283:1, 283:10, 283:18	1:13, 14:18, 14:19, 33:14, 46:4, 46:22, 47:10, 47:14, 48:16, 48:17, 49:8, 49:13, 50:20, 50:21, 51:8, 63:15, 153:4, 160:9, 160:10, 164:7, 164:10, 193:7, 200:14, 201:20, 203:2, 213:12, 214:16, 240:16, 242:17, 260:15, 265:21, 275:12, 287:15, 291:16, 292:3, 293:12, 295:21, 330:14, 340:7, 344:11, 378:19, 383:10, 389:10, 394:6, 416:14, 425:7	9:13, 10:13, 12:16, 16:13, 17:4, 46:10, 47:2, 48:21, 50:19, 51:15, 53:8, 54:13, 58:4, 68:13, 87:10, 89:6, 99:5, 118:12, 122:7, 134:18, 148:2, 153:8, 181:13, 186:4, 186:18, 186:22, 189:21, 198:16, 199:22, 227:5, 253:15, 254:13, 254:19, 263:11, 263:15, 264:11, 279:9, 289:16, 290:8, 290:10, 292:8, 305:10, 311:9, 312:14, 313:2, 315:8, 317:1, 320:4, 321:11, 337:17, 382:10, 392:21, 403:9, 408:6, 418:19, 442:15	423:15, 269:10, 280:14, 294:17, 303:9, 304:19, 305:1, 305:2, 311:16, 312:2, 312:19, 316:17, 357:6, 359:18, 367:13, 379:18, 397:12, 397:14, 429:19 <b>tomorrow</b>
<b>thoroughly</b>			427:20, 428:7, 428:11, 429:1, 429:4, 429:13, 429:17
<b>thought</b>			<b>ton</b>
16:8, 51:10, 72:2, 237:16, 274:2, 313:6, 313:7, 346:22, 366:19, 390:4, 434:11	200:14, 201:20, 203:2, 213:12, 214:16, 240:16, 242:17, 260:15, 265:21, 275:12, 287:15, 291:16, 292:3, 293:12, 295:21, 330:14, 340:7, 344:11, 378:19, 383:10, 389:10, 394:6, 416:14, 425:7	17:4, 46:10, 47:2, 48:21, 50:19, 51:15, 53:8, 54:13, 58:4, 68:13, 87:10, 89:6, 99:5, 118:12, 122:7, 134:18, 148:2, 153:8, 181:13, 186:4, 186:18, 186:22, 189:21, 198:16, 199:22, 227:5, 253:15, 254:13, 254:19, 263:11, 263:15, 264:11, 279:9, 289:16, 290:8, 290:10, 292:8, 305:10, 311:9, 312:14, 313:2, 315:8, 317:1, 320:4, 321:11, 337:17, 382:10, 392:21, 403:9, 408:6, 418:19, 442:15	37:9 <b>tonight</b>
<b>thousand</b>			379:15, 394:4, 404:17
436:11			<b>took</b>
<b>thousands</b>			31:12, 32:12, 98:15, 98:16, 98:21, 121:3, 185:4, 260:9, 329:16, 369:20, 378:21
15:21, 182:21, 182:22, 333:20	<b>throughout</b>		<b>top</b>
<b>threat</b>			5:18, 6:3, 6:16, 7:11, 7:14, 8:8, 8:11, 46:19, 47:17, 56:14, 69:17, 70:8, 127:11, 169:11, 186:20, 204:8, 240:12, 255:14, 287:12, 292:15, 305:11, 323:19
223:1, 407:4	<b>throw</b>		<b>topic</b>
<b>threatening</b>			182:1, 318:11, 320:12, 396:2
385:5	<b>throwing</b>		<b>topics</b>
<b>three</b>			12:5, 12:7,
25:19, 49:13, 53:9, 61:12, 69:12, 70:9, 74:14, 75:11, 76:2, 78:4, 80:6, 97:22, 110:13, 110:18, 114:14, 115:4, 115:8, 115:11, 115:15, 119:19, 162:6, 180:7, 184:17, 248:9, 249:3, 321:8, 321:9, 369:1, 394:19, 394:20, 400:2, 407:2	41:1, 81:7 <b>thrown</b>		
<b>threw</b>			
237:11, 322:22	238:20 <b>tieder</b>		
	2:5, 3:5 <b>timely</b>		
	63:14, 64:17 <b>times</b>		
	25:20, 110:13, 110:18, 115:12, 119:19, 194:17, 211:20, 213:14, 279:20, 305:1, 367:13, 370:8, 386:7, 386:12, 394:19, 394:20,	9:11, 134:6, 396:1 <b>together</b>	

CONTAINS CONFIDENTIAL PORTIONS  
12457

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

179

14:9, 317:14 <b>total</b> 13:19, 13:22, 15:18, 16:2, 16:8, 46:19, 47:20, 48:19, 50:11, 95:15, 96:8, 96:9, 98:16, 98:18, 98:21, 99:2, 104:4, 110:21, 114:3, 115:14, 119:16, 119:17, 147:14, 148:13, 150:10, 151:11, 153:2, 153:3, 171:14, 171:15, 182:19, 183:9, 226:6, 262:12, 292:3, 332:1, 335:14, 382:11, 382:20, 383:4, 398:2, 398:4, 403:9, 404:16, 407:12, 434:22 <b>totaling</b> 57:20, 152:18 <b>totally</b> 389:8 <b>touted</b> 443:14 <b>toward</b> 229:8 <b>track</b> 16:15, 16:16, 16:22, 17:1, 34:14, 45:14, 45:15, 46:12, 46:20, 47:21, 48:3, 48:5, 52:18, 52:22, 53:1, 53:4, 53:7, 56:20, 92:6, 92:10, 147:20, 223:15, 226:7, 226:9, 242:21, 244:13, 245:18, 245:21,	246:1, 246:3, 247:3, 248:22, 307:22, 308:3 <b>tracked</b> 267:16 <b>tracking</b> 242:9, 242:18, 243:2, 244:11, 245:9, 245:10, 246:6, 249:1, 273:5, 404:12 <b>trade</b> 414:10 <b>tragedy</b> 128:13 <b>transactions</b> 335:16 <b>transcribe</b> 396:13 <b>transcript</b> 5:7, 11:15, 67:12, 85:4, 88:8, 131:13, 138:4, 156:18, 158:9, 163:13, 216:11, 256:21, 286:8, 291:1, 294:2, 297:13, 315:17, 322:12, 331:9, 331:10, 339:3, 341:11, 343:12, 348:7, 371:22, 401:1, 414:18, 425:5, 427:8, 446:5 <b>transcription</b> 445:5 <b>transferred</b> 101:18, 277:11 <b>transitioning</b> 372:4 <b>transport</b> 43:8 <b>travel</b> 43:10, 128:10, 301:21, 334:22 <b>traveling</b> 335:2	<b>treasury</b> 61:3, 61:7, 69:16, 71:14, 76:20, 76:21, 79:6, 222:21, 222:22, 224:15 <b>treated</b> 133:18 <b>trees</b> 292:11 <b>tried</b> 230:3, 356:17 <b>trigger</b> 129:14 <b>triggers</b> 128:16 <b>true</b> 20:19, 26:14, 51:7, 68:5, 77:20, 79:1, 82:18, 95:3, 99:11, 110:9, 113:3, 114:17, 114:19, 114:20, 128:3, 136:22, 157:16, 160:5, 165:11, 165:12, 166:10, 203:11, 228:1, 228:5, 228:12, 229:22, 238:1, 241:15, 277:22, 295:15, 313:15, 320:2, 354:6, 354:19, 360:17, 363:22, 366:14, 379:12, 383:17, 412:14, 421:11, 428:2, 438:8, 445:4, 446:5 <b>trump</b> 18:15, 229:16, 230:3, 422:15 <b>trust</b> 306:12, 306:15, 306:17, 307:15, 307:16, 381:9, 381:15, 381:19,	381:21 <b>truth</b> 10:18, 10:19, 388:3 <b>truthful</b> 300:8 <b>try</b> 51:8, 53:16, 57:4, 75:20, 77:3, 118:6, 134:18, 150:12, 182:14, 197:12, 226:22, 228:9, 262:1, 385:12, 390:16, 405:5, 422:18 <b>trying</b> 24:10, 24:15, 42:7, 42:10, 42:19, 51:13, 53:8, 61:16, 62:6, 62:17, 65:11, 65:13, 74:16, 74:18, 74:19, 81:7, 88:10, 88:12, 98:7, 101:7, 101:9, 105:1, 106:21, 113:19, 117:5, 117:8, 126:17, 127:3, 140:20, 149:21, 165:5, 168:2, 169:9, 169:10, 169:13, 173:21, 174:1, 174:9, 199:21, 228:16, 247:21, 247:22, 248:2, 251:13, 252:12, 252:18, 268:7, 270:6, 274:7, 277:14, 288:10, 289:11, 289:13, 289:14, 289:16, 299:4, 299:18, 301:5, 308:18, 308:22, 330:6, 349:4,
--	---	--	---

## Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

180

357:22, 358:3, 358:7, 375:16, 377:11, 386:3, 390:20, 394:8, 395:19, 405:7, 405:12, 413:2, 423:7, 423:10, 438:20, 440:16, 440:21	<b>typically</b> 59:2, 69:22, 73:17, 123:18, 127:22, 128:3, 137:8, 178:4, 208:20, 216:19, 245:2, 245:9	144:13, 169:12, 179:13, 188:1, 212:3, 212:6, 224:2, 226:15, 248:20, 260:19, 262:19, 265:13, 265:16, 266:15, 267:2, 267:8, 268:21, 269:1, 271:13, 275:1, 275:6, 276:5, 276:9, 308:1, 323:12, 329:21, 330:17, 331:4, 339:4, 345:21, 346:4, 347:2, 348:13, 359:8, 360:4, 404:1, 408:1, 426:13, 426:20, 446:7	370:12, 370:16, 370:18, 376:17, 386:2, 423:13, 437:5, 441:6, 443:1
<b>tuesday</b> 1:17	<b>uh-huh</b> 11:22, 50:18, 56:2, 58:20, 95:22, 98:11, 183:11, 189:13, 193:17, 202:14, 212:15, 218:12, 241:2, 249:7, 260:20, 261:11, 281:18, 298:3, 306:3, 332:2, 333:13, 362:9, 372:22, 436:9	<b>under-2</b> 106:6	<b>undertood</b> 222:17, 222:18, 365:16
<b>turn</b> 36:18, 37:16, 252:13, 412:20, 412:22, 442:5	<b>ultimate</b> 142:7, 143:8	<b>underlying</b> 231:10	<b>undertakes</b> 21:16, 25:15
<b>twice</b> 361:19	<b>ultimately</b> 22:14, 23:7, 27:9, 67:1, 79:12, 97:1, 223:17, 228:10, 239:9, 243:17, 275:17, 431:18, 435:11, 443:7	<b>understanding</b> 17:14, 21:6, 22:3, 24:15, 32:13, 35:20, 44:18, 45:1, 69:14, 85:15, 85:18, 92:1, 94:19, 107:9, 149:21, 152:17, 153:22, 154:14, 154:15, 175:20, 193:21, 200:1, 202:21, 203:8, 203:21, 209:15, 212:2, 225:17, 226:1, 251:22, 252:18, 272:16, 272:17, 273:17, 291:20, 292:14, 313:5, 324:7, 326:13, 330:20, 337:10, 337:16, 365:7, 368:15, 370:2, 370:6,	<b>undertaking</b> 227:9
<b>two</b> 73:5, 78:4, 82:15, 94:20, 95:11, 113:12, 113:18, 114:5, 120:13, 128:9, 128:11, 153:12, 155:2, 161:14, 164:18, 164:22, 165:13, 166:12, 166:20, 168:19, 170:12, 171:1, 178:9, 186:10, 208:3, 258:22, 297:18, 303:11, 320:12, 320:13, 320:14, 322:16, 343:21, 388:17, 393:5, 435:13	<b>unacceptable</b> 348:22	<b>unit</b> 33:21, 69:22, 100:16, 102:4, 102:6, 125:11, 128:20, 129:2, 175:14, 176:14, 195:1, 196:15, 205:14, 208:19, 210:17	<b>unfortunately</b> 18:16, 199:16, 204:21, 205:5, 254:12, 308:1, 441:16
<b>two-week</b> 128:8	<b>unclear</b> 36:22, 87:8	<b>unilateral</b> 212:4, 212:7	
<b>type</b> 207:19, 366:9, 366:12, 441:17	<b>undefined</b> 172:6	<b>unique</b> 151:11, 151:22	
<b>types</b> 13:9, 177:14, 240:17, 275:9, 365:21	<b>under</b> 22:5, 24:16, 28:4, 29:3, 29:22, 30:3, 30:16, 32:15, 35:19, 86:3, 99:18, 107:3, 131:4, 132:9, 135:8, 135:21, 140:3, 141:4,	<b>united</b> 1:1, 9:7, 39:11, 146:19, 235:13, 236:6, 236:16, 335:5	
<b>typewriting</b> 446:7		<b>universal</b> 190:8, 233:13	
<b>typical</b> 216:21		<b>universe</b> 44:12, 114:4,	

CONTAINS CONFIDENTIAL PORTIONS

12459

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

181

127:21, 138:16 <b>unless</b> 35:22, 161:8, 231:20, 234:20, 364:9 <b>unlike</b> 335:11 <b>unpaid</b> 52:16, 335:19 <b>unpleasant</b> 246:8 <b>unreasonable</b> 81:4, 83:4, 84:9, 84:13, 326:13, 352:19, 353:22 <b>until</b> 19:2, 56:13, 58:22, 59:2, 61:15, 62:16, 65:9, 69:11, 70:21, 72:4, 72:12, 142:2, 221:17, 222:2, 264:14, 280:8, 281:1, 281:9, 295:7, 295:8, 329:22, 356:17, 371:12, 383:9, 427:10, 443:8 <b>untimely</b> 190:2, 191:1, 191:20, 261:4, 261:6, 262:10 <b>unwilling</b> 421:22 <b>unwillingness</b> 384:1, 390:13, 391:14 <b>up-to-date</b> 291:15 <b>upcoming</b> 370:1 <b>update</b> 287:17, 295:17, 334:1, 363:20 <b>updated</b> 334:3	<b>updates</b> 288:5, 288:9 <b>updating</b> 274:9 <b>upheld</b> 189:15 <b>upset</b> 353:17 <b>urbanski</b> 85:7, 256:7, 403:4, 431:19 <b>urgent</b> 340:19 <b>uscic</b> 265:13 <b>uscis</b> 265:16, 265:21, 266:16, 267:2, 267:8 <b>use</b> 15:7, 29:12, 41:10, 104:4, 116:7, 129:19, 129:20, 174:20, 178:4, 192:6, 192:7, 237:7, 250:18, 375:6, 421:20, 439:21 <b>uses</b> 29:13, 94:5 <b>using</b> 44:10, 87:12, 93:6, 93:12, 96:14, 99:12, 105:4, 108:10, 113:14, 113:15, 236:12, 238:2 <b>utilize</b> 243:12, 327:22, 328:4		<b>valuation</b> 438:21, 440:19 <b>value</b> 23:5, 98:16, 98:18, 98:21, 108:7, 153:2, 240:9, 291:21, 303:14, 304:1, 304:17, 305:14, 305:16, 305:19, 307:20, 309:4, 309:5, 333:7, 333:21, 385:19, 443:10 <b>values</b> 310:15 <b>van</b> 133:16 <b>variance</b> 437:19 <b>varies</b> 195:20 <b>various</b> 338:21, 339:1, 356:15 <b>vary</b> 37:2 <b>vast</b> 23:7, 27:7, 33:9, 33:11, 33:13, 105:12, 106:2, 125:3, 151:19, 187:15, 187:16, 187:17, 188:1, 188:2, 188:13, 188:14, 188:16, 188:19, 189:2 <b>vein</b> 168:11	<b>verbal</b> 206:13, 206:16, 403:12 <b>verified</b> 374:5 <b>verify</b> 324:22, 400:20 <b>verona</b> 410:1, 426:3, 426:4, 427:11, 429:14 <b>versus</b> 49:19, 52:13, 94:17, 113:20, 115:15, 116:6, 171:15, 270:11, 327:14, 392:4, 431:13, 435:1 <b>via</b> 207:10, 207:12, 207:16, 248:22, 418:18 <b>video</b> 1:12, 2:1, 9:12, 9:14 <b>videographer</b> 4:17, 9:2, 9:13, 10:12, 32:6, 32:9, 43:16, 43:19, 67:7, 67:10, 120:19, 120:22, 138:7, 172:22, 173:3, 184:20, 185:1, 234:12, 234:16, 260:3, 260:6, 311:3, 311:6, 331:11, 332:12, 332:15, 369:14, 369:17, 409:12, 409:15, 424:13, 424:16, 444:3 <b>violated</b> 139:2 <b>virginia</b> 1:2, 1:16, 2:16, 9:9, 9:16,
--	--	--	--	--

CONTAINS CONFIDENTIAL PORTIONS

12460

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

182

306:8, 332:10, 384:4, 419:3, 429:14, 446:22 <b>vis-à-vis</b> 71:2, 236:1, 236:3, 438:12 <b>visit</b> 45:22, 361:18 <b>vivian</b> 3:3, 8:16, 8:18, 8:21, 9:18, 16:5, 27:17, 108:13, 138:7, 169:16, 175:19, 196:10, 237:12, 241:16, 262:13, 274:6, 279:12, 289:18, 294:5, 321:1, 322:15, 364:4, 382:8, 429:8 <b>vivian's</b> 332:9 <b>voice</b> 9:16, 223:20, 366:19 <b>vulnerable</b> 390:15, 413:8	425:15 <b>waiver</b> 308:5 <b>waiving</b> 314:8 <b>walk</b> 133:10, 133:14 <b>walked</b> 295:20 <b>walking</b> 133:18 <b>wanted</b> 234:1, 251:3, 270:21, 273:17, 351:19, 352:1, 385:13, 397:12, 418:1, 427:16, 443:4 <b>wants</b> 34:3, 81:15, 83:20, 128:20, 430:2, 441:9 <b>warmer</b> 339:21 <b>warning</b> 135:21, 373:1 <b>warrant</b> 123:18, 126:21, 129:6, 129:12, 129:15, 129:18, 130:1, 136:11, 136:20, 137:2, 137:7, 137:10, 137:17, 236:9 <b>warrants</b> 137:8 <b>washington</b> 4:13, 330:7 <b>waste</b> 45:17, 46:6, 119:1, 318:13, 319:9 <b>wasting</b> 31:17, 320:6 <b>watching</b> 243:7 <b>watt</b> 2:5, 3:5	<b>way</b> 13:1, 18:18, 21:13, 23:9, 26:14, 29:8, 29:14, 36:15, 42:12, 51:6, 64:7, 75:5, 91:16, 92:10, 92:14, 97:4, 100:6, 106:14, 109:12, 110:22, 111:3, 113:16, 114:7, 114:12, 119:15, 125:12, 128:5, 131:8, 131:10, 133:19, 146:2, 150:18, 162:10, 172:2, 173:18, 180:1, 183:22, 247:3, 254:3, 258:22, 264:6, 274:1, 308:1, 308:4, 337:4, 349:16, 352:17, 353:19, 354:22, 355:20, 358:11, 364:8, 373:20, 391:21, 425:20, 426:14, 437:6 <b>we'll</b> 12:19, 54:3, 103:17, 160:9, 235:4, 259:10, 263:14, 271:1, 278:1, 300:16, 300:17, 301:19, 357:9, 395:20, 398:4, 401:22, 402:11, 429:5, 430:21 <b>we've</b> 27:13, 47:19, 73:8, 81:9, 82:11, 84:4, 84:5, 90:22, 91:16, 121:19, 125:17, 147:15,	148:14, 153:22, 155:13, 198:6, 210:15, 210:17, 213:10, 214:16, 214:19, 230:7, 231:15, 239:19, 239:22, 272:5, 274:16, 275:7, 287:17, 287:19, 312:21, 320:3, 326:19, 331:1, 333:17, 333:18, 333:20, 336:21, 346:10, 381:13, 383:15, 401:21, 411:20, 420:2, 431:20, 438:2 <b>wearing</b> 242:14 <b>wednesday</b> 39:16, 39:18, 40:4, 40:6 <b>week</b> 31:13, 157:18, 231:6, 277:17, 302:6, 317:6, 340:8, 366:14, 375:15 <b>weeks</b> 128:9, 128:11, 248:9 <b>weird</b> 173:21, 220:16, 222:9, 337:4 <b>welcome</b> 68:20, 235:7, 264:3, 292:13, 320:20, 327:18, 329:2, 343:10 <b>went</b> 42:15, 101:22, 196:7, 332:10, 340:7, 344:15 <b>weren't</b> 69:11, 79:3, 79:7, 229:13, 229:20, 237:21, 254:14, 272:20,
---	---	--	---

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

183

290:20, 290:22, 349:11, 388:13 <b>western</b> 1:2, 9:8, 384:4 <b>whatever</b> 46:17, 53:9, 103:4, 115:3, 200:16, 210:14, 228:18, 443:10 <b>whatsoever</b> 33:12, 165:16, 440:8 <b>whereabouts</b> 242:22, 244:22 <b>whereas</b> 179:15 <b>whereof</b> 446:13 <b>whereupon</b> 10:15 <b>whether</b> 41:5, 42:8, 42:20, 47:22, 56:12, 58:4, 73:15, 77:9, 86:2, 87:8, 150:10, 155:16, 156:2, 169:21, 171:1, 172:1, 187:2, 189:14, 192:22, 204:10, 212:4, 226:9, 244:10, 247:5, 247:13, 247:15, 257:18, 266:1, 266:4, 277:21, 278:8, 278:22, 279:17, 280:5, 280:20, 281:6, 285:10, 299:19, 334:18, 338:17, 355:15, 356:22, 357:11, 369:21, 370:10, 371:14, 372:13, 394:9, 426:19 <b>whichever</b> 393:8	<b>who've</b> 264:12 <b>whole</b> 10:18, 61:6, 78:3, 97:9, 106:20, 117:16, 134:16, 134:17, 136:14, 136:15, 146:2, 236:2, 251:17, 310:20 <b>wholly</b> 421:16, 427:3, 427:4 <b>wide</b> 185:16, 185:17, 436:13 <b>wild</b> 286:9 <b>williams</b> 4:18, 10:3, 24:5, 27:17, 28:1, 28:5, 28:9, 126:1, 126:13, 232:5, 234:17, 234:19, 308:13, 308:17, 309:2, 385:11, 385:18, 386:1, 386:3, 390:22, 391:3, 394:13, 395:20, 399:18, 423:22, 424:9, 433:8, 440:5, 443:13 <b>willing</b> 273:19, 417:14, 418:2, 426:11, 441:10 <b>win</b> 179:1 <b>window</b> 63:7, 64:13, 64:19, 151:21, 200:11, 208:3, 213:5, 344:12, 356:10, 389:21 <b>windows</b> 208:3	<b>winds</b> 372:6 <b>wire</b> 379:7 <b>wish</b> 241:13, 241:15, 379:15 <b>wished</b> 149:1 <b>withdraw</b> 259:15 <b>within</b> 30:20, 56:18, 58:5, 63:9, 63:10, 63:11, 64:16, 80:11, 83:5, 83:16, 84:18, 84:20, 114:13, 147:4, 151:21, 165:13, 174:15, 176:10, 176:12, 188:7, 192:2, 208:1, 208:2, 219:1, 219:10, 220:4, 221:1, 221:6, 223:7, 223:13, 226:2, 228:22, 229:14, 230:1, 231:21, 232:9, 233:11, 251:3, 251:14, 252:1, 350:1, 354:11, 354:19, 356:10, 407:3 <b>without</b> 33:12, 37:17, 50:19, 53:8, 53:15, 71:16, 77:19, 129:8, 145:2, 145:12, 155:12, 158:2, 187:11, 206:14, 230:18, 238:1, 266:16, 267:3, 336:12, 336:22, 337:3, 373:1, 385:5, 398:11,	437:9 <b>witness</b> 10:14, 20:22, 33:17, 35:7, 42:15, 51:16, 57:15, 89:1, 89:3, 89:12, 103:6, 103:19, 103:22, 117:7, 118:17, 146:15, 155:20, 165:7, 168:6, 168:8, 207:3, 207:15, 220:14, 222:8, 222:11, 222:14, 234:14, 263:12, 314:6, 314:10, 317:7, 319:16, 320:15, 322:20, 369:4, 374:11, 385:21, 396:7, 396:10, 396:20, 399:1, 399:4, 425:13, 425:16, 430:13, 430:17, 432:2, 434:13, 446:13 <b>witness's</b> 112:7 <b>witnesses</b> 368:5 <b>wonder</b> 88:9 <b>wonderful</b> 169:3, 361:22 <b>wondering</b> 440:14 <b>word</b> 15:7, 137:4, 174:20, 237:8, 399:12 <b>words</b> 51:4, 96:20, 167:13, 211:19, 226:8, 236:6, 244:2, 244:12, 253:21, 299:11, 380:9, 402:8
--	---	---	--

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

184

<b>work</b>	<b>write</b>	138:9, 141:16, 147:14, 149:10, 149:11, 152:21, 172:10, 174:4, 176:15, 176:22, 183:14, 184:16, 188:15, 191:21, 192:4, 198:20, 207:3, 219:15, 225:20, 229:18, 231:9, 232:13, 234:14, 240:2, 263:12, 268:6, 278:11, 286:19, 287:11, 293:1, 293:5, 298:14, 313:10, 317:22, 323:14, 341:15, 342:5, 342:8, 344:10, 347:5, 362:19, 366:8, 371:8, 373:6, 379:13, 383:2, 383:7, 383:11, 396:7, 405:1, 406:6, 410:8, 417:8, 428:16, 436:3, 439:21, 55:22, 82:15, 115:9, 228:3, 229:10, 229:15, 230:22, 231:2, 231:8, 245:4, 272:15, 274:21, 275:1, 296:9, 344:13, 354:13, 367:22, 370:1, 375:9, 375:12, 50:15, 64:8, 69:3, 70:18, 79:11, 86:9, 86:12, 90:5, 96:16, 101:8, 104:21, 111:16, 116:12, 130:9, 131:10, 136:22,	97:22, 115:20, 116:4, 120:1, 120:13, 153:12, 155:2, 161:14, 164:19, 164:22, 165:13, 166:12, 166:20, 168:19, 170:12, 171:1, 249:3, 278:2, 303:11 <b>yep</b> 57:18, 232:17, 266:6, 341:5, 364:11, 415:6 <b>yesterday</b> 31:21, 54:18, 160:14, 216:3, 276:18, 283:1 <b>york</b> 128:10, 178:8 <b>yourself</b> 52:12, 211:12, 409:8 <hr/> <b>Z</b> <hr/> <b>zero</b> 114:14, 115:5, 115:17, 234:7, 234:10 <b>zones</b> 243:8 <hr/> <b>\$</b> <hr/> <b>\$1.2</b> 357:8, 368:4 <b>\$1.25</b> 368:16, 370:5, 372:19, 386:14, 386:16 <b>\$10</b> 138:16, 346:10, 346:11, 355:15, 356:17, 387:1, 391:18, 406:9, 407:15 <b>\$10,000</b> 240:7, 392:10 <b>\$11</b> 231:15, 337:13
	<b>yeah</b>	21:15, 26:4, 32:18, 44:16, 50:15, 64:8, 69:3, 70:18, 79:11, 86:9, 86:12, 90:5, 96:16, 101:8, 104:21, 111:16, 116:12, 130:9, 131:10, 136:22,	

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

185

<b>\$2</b>	.1000	<b>1,457</b>	5:10, 6:21,
333:19, 431:16	2:9, 3:9	185:18, 185:19,	9:12, 32:7,
<b>\$2.5</b>	<b>.1150</b>	187:2, 189:1,	32:10, 173:4,
431:12	3:17	189:15, 190:12,	256:20, 256:22,
<b>\$20,000</b>	<b>.3188</b>	262:12	257:2, 424:4
236:7	4:14	<b>1,700</b>	<b>11,477,712</b>
<b>\$220,000</b>	<b>0</b>	246:18	99:3
336:4	<b>00</b>	<b>1,767</b>	<b>110,000</b>
<b>\$231</b>	262:14	171:21, 172:11,	302:7
302:1	<b>000000001</b>	173:11	<b>113</b>
<b>\$250,000</b>	5:21	<b>1.152</b>	329:8
358:22	<b>000000080</b>	298:6	<b>1175</b>
<b>\$3</b>	6:20	<b>1.25</b>	3:14
23:11, 298:19, 431:20, 432:14	<b>000018727</b>	355:17, 356:18,	<b>11971</b>
<b>\$3,000</b>	5:21	368:22, 387:15,	4:5
432:22	<b>0002</b>	391:16	<b>12</b>
<b>\$3,212,833.67</b>	<b>00066</b>	<b>1/9/2016</b>	7:3, 43:17,
48:20	1:8, 9:10	8:10	43:20, 286:2,
<b>\$3,212,883.67</b>	<b>0084</b>	<b>10</b>	286:7, 436:11
47:20, 50:11, 99:17, 436:5	6:20	5:20, 6:16,	<b>120</b>
<b>\$3,400</b>	<b>01</b>	69:13, 70:12,	57:10, 57:11,
392:10	369:15	99:19, 216:10,	58:5, 58:22,
<b>\$3.212</b>	<b>02</b>	216:14, 340:20,	69:16, 151:21,
57:20	173:1	341:13, 342:3,	213:14, 225:7,
<b>\$36,000</b>	<b>0221609</b>	342:7, 342:16,	228:3
306:4	8:7	344:12, 347:8,	<b>13</b>
<b>\$420,000</b>	<b>0222756</b>	347:11, 347:13,	7:5, 8:3,
434:1	7:21	349:4, 349:11,	120:20, 158:11,
<b>\$481,928,000</b>	<b>0236333</b>	349:14, 350:1,	294:1, 294:4,
98:20	8:10	353:7, 354:11,	331:11, 331:13,
<b>\$5,000</b>	<b>0253294</b>	354:20, 356:10,	342:22, 343:13,
240:6, 240:9	8:13	387:16, 390:3,	344:11, 344:16,
<b>\$5,117,500</b>	<b>027806</b>	404:19, 406:5,	347:11, 349:5,
152:22	7:10	406:18, 429:8,	349:9, 349:17,
<b>\$5,250,415.14</b>	<b>027807</b>	437:2	360:21, 361:7,
332:20	7:7, 292:6	<b>10,000</b>	366:1, 374:15,
<b>\$50,000</b>	<b>04</b>	327:14	379:3, 386:21
359:19, 360:5, 360:11, 361:1	43:17	<b>100</b>	<b>13,2019</b>
<b>\$6,600</b>	<b>07</b>	170:1	6:12
397:21	409:16	<b>100,000</b>	<b>131</b>
<b>\$784,088.20</b>	<b>1</b>	302:9	5:18
292:4	<b>1,146</b>	<b>1000</b>	<b>138</b>
.	147:15, 148:15, 148:18, 149:17, 149:20	2:7, 3:7, 3:15,	6:3, 287:3
<b>.0101</b>		4:12	<b>14</b>
4:7		<b>1050</b>	7:8, 121:1,
		4:11	297:12, 369:18
		<b>11</b>	<b>15</b>
		1:18, 5:3,	7:11, 8:6,

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

186

54:2, 173:1, 173:4, 184:21, 185:2, 217:9, 218:8, 218:9, 315:16, 348:8, 348:17, 350:4, 360:5, 360:6 <b>150,000</b> 231:6 <b>156</b> 6:7 <b>158</b> 6:10 <b>16</b> 7:14, 260:4, 322:11, 323:3 <b>163</b> 6:13 <b>1646</b> 8:7 <b>17</b> 7:17, 260:7, 261:4, 277:20, 283:9, 301:4, 339:2 <b>1765</b> 2:6, 3:6, 9:15 <b>18</b> 1:8, 7:19, 156:14, 229:21, 276:2, 277:20, 283:10, 291:17, 301:4, 311:4, 311:7, 328:18, 341:10 <b>19</b> 6:19, 8:3, 8:17, 103:10, 229:21, 276:2, 277:20, 291:18, 328:18, 332:13, 332:16, 343:11, 424:14, 424:19, 424:22, 428:9, 428:13, 429:5, 429:10, 429:19, 429:21, 430:1 <b>1st</b> 49:14, 54:4,	91:4, 324:19, 363:19, 414:20, 415:7, 419:16, 419:17, 419:22, 420:16, 420:21, 421:8 <b>2</b> <b>2,486</b> 44:16, 44:20, 45:2, 46:13, 91:6, 93:19 <b>2-plus</b> 437:1 <b>2.275</b> 302:16 <b>2.3</b> 392:3 <b>2.38</b> 96:4, 109:19, 119:19 <b>2.5</b> 441:12 <b>20</b> 7:17, 8:5, 54:2, 55:22, 85:17, 195:10, 287:3, 348:6, 369:15, 369:18, 409:13 <b>200</b> 170:1, 436:10 <b>20036</b> 4:13 <b>2014</b> 14:21, 229:19 <b>2015</b> 96:12, 229:19 <b>2016</b> 5:20, 6:5, 6:19, 200:9, 217:9, 229:19, 309:7, 338:20, 355:11, 356:15, 360:14, 361:19, 362:3, 363:13, 363:19, 366:6, 366:16, 367:4, 49:14, 54:4,	367:5, 367:20, 368:13, 373:16, 388:1, 388:15, 389:10, 389:11 <b>2017</b> 7:4, 7:17, 8:3, 8:6, 8:15, 103:10, 200:14, 229:12, 229:13, 229:15, 229:19, 229:21, 248:14, 273:7, 274:9, 276:2, 276:4, 276:11, 276:22, 278:9, 279:1, 279:17, 283:21, 284:16, 284:22, 285:12, 285:15, 287:16, 288:12, 288:19, 288:20, 290:7, 291:17, 296:9, 301:12, 328:18, 339:11, 341:19, 343:13, 348:17, 352:12, 355:3, 355:13, 356:6, 363:14, 366:17, 367:22, 368:14, 368:21, 370:1, 370:4, 370:10, 372:11, 373:2, 373:17, 373:21, 374:15, 379:3, 406:4, 409:21, 410:4, 411:15, 411:22, 412:16, 413:3, 414:20, 415:7, 415:13, 419:17, 419:22, 420:16, 421:8 <b>2018</b> 6:15, 7:9, 7:16, 8:13, 8:17, 8:22, 50:2, 73:3, 91:15, 154:12, 156:8, 156:13, 156:15, 163:4, 163:14, 200:9, 200:15, 228:13, 230:8, 231:12, 246:21, 249:13, 273:10, 275:13, 276:4, 276:11, 276:21, 280:5, 283:21, 286:12, 287:4, 289:3, 289:6, 296:9, 297:14, 298:1, 301:22, 302:14, 321:22, 424:19, 424:22, 425:17, 426:4, 426:22, 429:7 <b>2019</b> 7:6, 156:12, 158:11, 228:11, 246:21, 275:13, 276:15, 280:19, 282:1, 282:10, 282:16, 282:20, 292:3, 293:18, 294:8, 296:3, 296:8, 296:11, 296:15, 297:18, 298:6, 298:13, 298:19, 300:19, 301:22, 302:15, 302:19, 329:4, 338:7 <b>202.772</b> 4:14 <b>2020</b> 1:17, 6:9, 7:13, 9:11, 49:15, 54:5, 67:14, 73:4, 85:7, 86:16, 87:13, 88:1, 88:4, 89:5, 91:5, 154:10, 154:11, 246:12, 248:14, 274:11, 275:14, 275:22, 276:16, 282:12,	162:15, 163:4, 163:14, 200:9, 200:15, 228:13, 230:8, 231:12, 246:21, 249:13, 273:10, 275:13, 276:4, 276:11, 276:21, 280:5, 283:21, 286:12, 287:4, 289:3, 289:6, 296:9, 297:14, 298:1, 301:22, 302:14, 321:22, 424:19, 424:22, 425:17, 426:4, 426:22, 429:7
--	---	---	--

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

187

282:15, 329:6, 330:15, 330:21, 446:15, 446:16 <b>208</b> 185:14, 188:20, 262:13 <b>21</b> 6:9, 8:8, 88:4, 120:20, 332:16, 371:21, 374:4, 409:16, 424:14, 424:17, 444:5 <b>21,404,950</b> 173:12 <b>210</b> 416:4, 416:17, 416:21 <b>213,000</b> 382:17 <b>216</b> 6:16 <b>22</b> 8:11, 8:13, 67:14, 85:6, 85:16, 86:16, 87:13, 88:1, 89:5, 363:19, 366:3, 400:22 <b>22102</b> 2:8, 3:8 <b>23</b> 6:5, 8:15, 70:16, 98:15, 414:17, 419:22 <b>23,000</b> 15:18, 44:5, 96:15 <b>23,234</b> 44:4, 44:6, 98:15 <b>234</b> 262:5 <b>24</b> 8:17, 184:21, 424:17, 425:4 <b>24,000</b> 15:18, 16:4, 16:10, 44:3	<b>24022</b> 4:6 <b>25</b> 8:20, 12:4, 69:10, 152:16, 427:7 <b>250</b> 357:15 <b>250,000</b> 359:1, 359:4 <b>256</b> 6:21 <b>26</b> 286:12 <b>27</b> 368:21, 370:4, 373:9 <b>28</b> 7:15, 8:21, 287:4, 311:4, 321:22, 373:2, 427:10, 428:6, 429:5, 429:7 <b>286</b> 7:3 <b>29</b> 1:18, 9:12, 52:15, 426:4, 426:22, 427:17, 428:1, 428:6, 428:15, 429:6, 429:13, 429:20, 430:3 <b>290</b> 47:19, 48:19, 49:19, 50:10, 51:18, 52:13, 54:10, 55:7, 57:20, 93:6, 93:18, 94:9, 149:6, 149:7, 153:5 <b>290403</b> 1:20 <b>294</b> 7:5 <b>297</b> 7:8	<b>2nd</b> 54:18, 163:11, 163:14 <b>3</b> <b>3</b> 150:19, 184:15 <b>3,212,000</b> 436:16 <b>3-point</b> 298:19 <b>3.212</b> 54:8 <b>3.625</b> 54:6 <b>3/6/2017</b> 7:21 <b>30</b> 5:10, 9:3, 11:8, 11:20, 12:6, 12:12, 14:7, 31:1, 56:18, 63:9, 63:10, 63:11, 64:16, 70:15, 80:11, 81:10, 83:16, 99:14, 147:4, 147:22, 149:15, 150:19, 152:13, 166:1, 174:15, 184:15, 195:10, 207:3, 208:1, 219:11, 221:6, 223:7, 223:13, 226:2, 228:22, 229:14, 230:1, 231:21, 232:9, 233:11, 251:3, 251:14, 252:2, 252:21, 317:14, 446:16 <b>30,000</b> 230:9, 231:5 <b>30,222,950</b> 44:21 <b>30,227,950</b> 153:2 <b>30361</b> 3:16	<b>31</b> 57:9, 58:5, 350:6, 350:13 <b>315</b> 7:11 <b>319</b> 49:16, 49:20, 52:12 <b>322</b> 7:14 <b>323</b> 130:3, 130:10, 130:21, 138:6, 138:18, 142:13 <b>33</b> 124:16, 125:7, 174:15, 176:10, 176:12, 192:2, 208:5 <b>3300</b> 8:14 <b>339</b> 7:17, 261:7, 262:9 <b>340</b> 26:16, 26:18, 27:4, 28:16, 29:19, 33:20, 34:7, 36:5, 36:13, 36:17, 37:14, 40:8, 43:6, 43:7, 46:15, 128:16, 129:20, 130:4, 130:5, 131:1, 131:14, 131:19, 135:2, 147:18, 163:6, 163:7, 163:8, 415:22, 416:16 <b>3400</b> 327:15 <b>341</b> 7:19 <b>343</b> 8:3 <b>348</b> 8:5
--	--	--	---

Transcript of Micheal Paul Donovan, Corporate Designee

Conducted on March 3, 2020

188

<b>352</b>	235:8	<b>58</b>	<b>737,800</b>
23:5, 73:21	<b>425</b>	260:4, 311:7	436:6, 436:20
<b>37</b>	8:17	<b>5:-cv--mfu</b>	<b>74</b>
260:7	<b>427</b>	1:8	261:13
<b>372</b>	8:20	<b>6</b>	<b>76</b>
8:8	<b>431</b>	<b>60</b>	363:18, 364:20
<b>38</b>	5:4	57:9, 58:5,	<b>797</b>
234:17, 234:19	<b>433</b>	84:18, 84:20,	65:3, 76:1,
<b>385</b>	5:5	233:11	416:2, 416:16
152:17	<b>44</b>	<b>600,000</b>	<b>8</b>
<b>39</b>	444:5	231:7	<b>85</b>
429:8	<b>446</b>	<b>606</b>	5:14
<b>391</b>	1:21	275:1, 275:14,	<b>86</b>
19:6, 20:18,	<b>47</b>	276:9	372:20
35:18, 192:14,	101:1, 194:13,	<b>61</b>	<b>8739</b>
416:4, 416:18	194:14, 194:15,	57:10, 258:1	6:6
<b>395</b>	194:17, 194:19,	<b>625</b>	<b>88</b>
152:21, 153:10,	194:21, 195:8,	382:11	5:16
153:22, 170:15	199:6, 201:2,	<b>63</b>	<b>883</b>
<b>399</b>	202:10, 202:18,	261:2	436:11
91:6, 92:17,	204:12, 204:18,	<b>650,000</b>	<b>8th</b>
93:9, 93:18	211:21	382:8	372:1
<b>3c</b>	<b>48</b>	<b>66</b>	<b>9</b>
339:5	32:7	124:16, 125:8,	<b>90</b>
<b>3m</b>	<b>4th</b>	208:4	58:5, 233:11,
333:11	446:14	<b>67</b>	246:14, 246:17,
<b>3rd</b>	<b>5</b>	5:12, 436:11	248:12, 248:14
9:11, 339:11,	<b>5</b>	<b>689</b>	<b>978,000</b>
340:2, 341:2,	262:14, 331:11,	93:19, 94:9	300:20
344:11, 344:16,	331:13	<b>6th</b>	<b>9th</b>
347:10, 349:5,	<b>5,219,000</b>	340:22, 341:13,	69:12
349:9, 349:16,	92:18	342:1, 342:16,	
353:2, 354:9,	<b>5.2</b>	361:7, 366:1,	
360:20, 361:7,	302:10	386:20	
361:9, 365:22,	<b>50</b>	<b>7</b>	
386:19, 386:20	37:12, 162:6	<b>7.5</b>	
<b>4</b>	<b>500,000</b>	302:15	
<b>4.6</b>	358:22	<b>700</b>	
298:2	<b>518</b>	48:14	
<b>401</b>	9:10	<b>703.749</b>	
8:11	<b>52</b>	2:9, 3:9	
<b>404.239</b>	32:10, 302:9,	<b>72</b>	
3:17	409:13	250:15	
<b>414</b>	<b>540.345</b>	<b>72,000</b>	
8:15	4:7	249:17	
<b>42</b>	<b>550,000</b>	<b>725,000</b>	
94:11, 185:2,	336:6	301:22	